SUPREME COURT OF THE UNITED STATES.

No. 350.

THE STEAMBOAT KEOKUK AND BARGE FARLEY, THE LA CROSSE AND MINNESOTA STEAM PACKET COMPANY, CLAIMANT AND RESPONDENT, AND WILLIAM F. DAVIDSON, STIPULATOR OF SAID CLAIMANT, APPELLANTS,

vs.

JOHN ROBSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1 Circuit Court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the Circuit Court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the ninth day) of September, A. D. 1867.

Present and presiding, the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit; Cassius Fairchild, marshal; Edward Kurtz, clerk.

Among other the following proceedings were had, to wit:

Appeal in admiralty.

JOHN ROBSON, libellant,
vs.
THE STEAMBOAT KEOKUK AND BARGE FARley, The La Crosse & Minnesota Steam Packet Company, claimant and respondent, and William F. Davidson, stipulator of said claimant.

Be it remembered that heretofore, to wit, on the fourteenth day of March, A. D. 1867, a certified copy of record in said cause in the District Court of the United States for the district of Wisconsin was received from the clerk of said court and filed in the clerk's office of this court, as follows, to wit:

2 District Court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss* :

At a stated term of the District Court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the tenth day) of September, A. D. 1866.

Present: The Honorable Andrew G. Miller, judge of said court, presiding; Cassius Fairchild, marshal; John M. Miller, clerk.

Among other the following proceedings were had, to wit:

JOHN ROBSON
vs.
THE STEAMBOAT KEOKUK AND BARGE FARley, The La Crosse & Minnesota Steam Packet Co., claimant. — In admiralty.

Be it remembered that heretofore, to wit, on the ninth day of February, A. D. 1866, came the said libelant, by his proctors, Messrs. Emmons & Van Dyke, and presented to the court his libel against the steamboat Keokuk, her boilers, engines, machinery, boats, tackle, apparel and furniture, and the barge Farley, as follows :

Libel.—In admiralty.

To the judge of the District Court of the United States for the district of Wisconsin:

John Robson, of Winona, in the State of Minnesota, exhibits this his libel against the steamboat called the Keokuk, whereof Charles Sencerbox now is, or lately was master, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge "Farley," in tow of and appurtenant to and part of the equipment of said steam-
3 boat in the transportation of freight, in a cause of contract, civil and maritime, and thereupon doth allege and articulately propound as follows, to wit:

First. That said steamboat, now lying at La Crosse, in the district aforesaid, is a vessel of more than twenty tons burthen, and at the time when the cause of action hereinafter stated and set forth arose was enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States of the United States upon the Mississippi river, a river navigable from the sea; and then had the said barge Farley appurtenant to said steamboat as part of her equipment in her business of commerce and navigation upon said river.

Second. That during the season of navigation of the year one thousand eight hundred and sixty-five the said steamboat and barge were owned and employed by the La Crosse and Minnesota Steam Packet Company in the transportation of freight and passengers on the Mississippi river, and between Winona, in the State of Minnesota, and La Crosse, in the State of Wisconsin; the said barge was employed appurtenant to and as part of the equipment of said steamboat in the transportation of wheat in bulk between the places aforesaid, and in the carrying of freight and property upon said river.

Third. That on or about the twenty-seventh day of Octo-
4 ber, A. D. 1865, the said steamboat and barge, being then at Winona, in the State of Minnesota, and designed on a voyage upon the Mississippi river from Winona aforesaid to La Crosse aforesaid, the libelant being the owner of thirty-five hundred bushels of number one spring wheat, of the value of four thousand three hundred and five dollars, shipped on board of said barge said thirty-five hundred bushels of wheat in good order and condition, to be carried and conveyed on board of said barge, by said steamboat and barge, from Winona aforesaid to La Crosse aforesaid, and there to be delivered in like good order and condition, in consideration of certain freight in that behalf to be paid.

Fourth. That the said master as aforesaid, and the officers of said steamboat and barge, not regarding their duty in that respect nor the promises and undertaking to convey and deliver the said wheat as aforesaid, did not so convey and deliver the same; but on the contrary thereof, by reason of the unseaworthiness of said steamboat and barge, and the weak condition of said barge and its unfitness to carry wheat in bulk, and by reason of the negligent and careless conduct of the master and his mariners and servants under him in respect

to said wheat, and by and through the mere carelessness, negligence and improper conduct of said master and his mariners and servants, and the insufficiency of said barge, the said wheat became wetted and damaged, by reason whereof the libelant has sustained damage to the amount of three thousand seven hundred and thirty dollars.

Fifth. That on or about the twenty-seventh day of October, one thousand eight hundred and sixty-five, the said steamboat Keokuk and barge "Farley" appurtenant, then being at Winona, in the State of Minnesota, and bound on a voyage upon the Mississippi
5 river from Winona aforesaid to La Crosse, in the State of Wisconsin, within the admiralty and maritime jurisdiction of this honorable court, the libelant being the owner of thirty-five hundred bushels of number one spring wheat, of the value of four thousand three hundred and five dollars, shipped on board said barge, appurtenant to and constituting a part of the equipment of said steamer for the transportation of wheat in bulk, and used by said steamer for that purpose, the said thirty-five hundred bushels of wheat in good order and condition, to be carried and transported by said steamer from Winona aforesaid to La Crosse aforesaid in the like good order and condition, and from thence to be transported to Angus, Smith & Co., of Milwaukee, Wisconsin, the unavoidable dangers of river and fire only excepted, in consideration of certain freight and charges to be paid upon delivery of said wheat to said consignees or their assigns; that the said libelant, on said 27th day of October, delivered to the clerk of said steamer Keokuk, on board thereof, upon such shipment, a memorandum or bill of lading and contract, a copy of which is hereto annexed, marked exhibit "A," and made a part hereof, and which the clerk of said steamer received from said libelant and retained whilst the said steamer and barge, with said wheat on board, were at Winona aforesaid, and about to depart on the voyage aforesaid; but the said master of said steamer and barge, and his officers, mariners and servants, not regarding their duty in that respect, nor his undertaking to carry and deliver the said wheat in this article of this libel described as aforesaid, did not so convey and deliver the same, although no unavoidable dangers of river or fire prevented, but, on the contrary thereof, by reason of the
6 unseaworthiness and insufficiency of said barge and the negligent and careless conduct of the master with respect to said wheat, that by and through the mere carelessness, negligence and improper conduct of the said master and officers and mariners and servants of said steamer and barge, and the insufficiency and unseaworthiness of said barge, the said wheat became wetted and greatly damaged, by reason whereof the libelant has sustained damages to the amount of three thousand seven hundred and thirty dollars, for which he claims reparation in this suit.

Sixth. That all and singular the premises are true; wherefore the libelant prays that process, in due form of law, may issue against the said steamboat Keokuk, her engine, boiler, machinery, boats, tackle, apparel and furniture, and barge "Farley," and that this honorable court will pronounce for his aforesaid damages and demand, and will

decree the same to be paid with interest from the 27th day of October, A. D. 1865, besides costs, and for such other relief in the premises as to right and justice may appertain.

JOHN ROBSON,
By EMMONS & VAN DYKE,
Proctors.
EMMONS & VAN DYKE,
Proctors.

DISTRICT OF WISCONSIN, *ss:*

John H. Van Dyke, of Milwaukee, in said district, being duly sworn, says, that he is one of the proctors of the libelant, who resides at Winona, in the State of Minnesota; that he has read the foregoing libel and knows the contents thereof, and has been made familiar with the facts stated by communications from said libelant, and verily believes said libel to be true.

JOHN H. VAN DYKE.

7 Subscribed and sworn to this ninth day of February, A. D. 1866, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

Schedule "A."

WINONA, *Octo.* 27, 1865.

Shipped in good order and condition, by John Robson, for account of him, on board the steamer Keokuk, whereof Sencerbox is master, the following articles, as here marked and described, to be delivered in like good order and condition, as addressed in the margin, (the unavoidable dangers of river and fire only excepted,) or to his or their assignees, at the rate of 26 cents per bus. to Mil.; freight and charges to be paid as noted below, upon the actual and complete delivery of the said goods and freight to said consignees or their assigns.

In witness whereof the owner or clerk of said boat hath affirmed to bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Marks.	Articles.	Weight.
To Angus, Smith & Co.....	3,500 bus. wheat in barge Farley.	

And same day (February 9th, 1866) said libelants filed their stipulation for the payment of costs, as follows:

8 District Court of the United States for the district of Wisconsin.

Whereas a libel was filed in this court on the ninth day of February, in the year of our Lord one thousand eight hundred and sixty-six, by John Robson, against the steamboat Keokuk, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Farley, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue , and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant, or his surety, execution may issue against their goods, and chattels and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and they are bound, in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against by this court, or in case of appeal, by the Appellate Court.

JOHN ROBSON, *Libelant*,
By EMMONS & VAN DYKE,
Proctors.
J. ALBERT HELFENSTEIN.

Taken and acknowledged, this ninth day of February, 1866, before me.

J. M. MILLER,
U. S. Commissioner.

DISTRICT OF WISCONSIN, *ss*:

J. Albert Helfenstein, party to the above stipulation, being duly sworn, deposed and says, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

J. ALBERT HELFENSTEIN.

Sworn to, this ninth day of February, 1866, before me.

J. M. MILLER,
U. S. Commissioner.

9 *Order for process and advertisement.*

Whereupon it is ordered by the court that a monition issue to the marshal, returnable on the twentieth day of February, instant, at eleven o'clock in the forenoon, and that this court will on that day proceed to the trial and hearing thereof; and it is further ordered, that notice be given by advertisement in the Daily Milwaukee News, a daily paper printed in the city of Milwaukee, and by notices posted

in the most public manner at and near the place of trial, for at least six days.

Whereupon a monition issued as follows:

10 DISTRICT OF WISCONSIN, *ss*:

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the District Court of the United States for the district of Wisconsin, on the ninth day of February, in the year of our Lord one thousand eight hundred and sixty-six, by John Robson, against the steamboat Keokuk, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Farley, for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had, that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the district of Wisconsin, on the twentieth day of February, instant, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the District Court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this ninth day of February, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninetieth.

[SEAL.] J. M. MILLER, *Clerk.*

EMMONS & VAN DYKE,
Proctors for Libellant.

[50-c. stamp, canceled.]

11 *Return—monition returned.*

"In obedience to the within precept, I have this tenth day of February, A. D. 1866, attached the steamboat Keokuk, her boiler, engine, machinery boats, tackle, apparel and furniture, at La Crosse, and have given due notice by advertisement for six days in the Milwaukee Daily News, and by posting notices, to all persons claiming

the same, that this court will, on the twentieth day of February, instant, at eleven o'clock in the forenoon of that day, should the same be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same, and they make their allegations in that behalf.

D. C. JACKSON, *Marshal*,
By WM. S. JACKSON, *Deputy*.

Fees, 21 50.

Claimant's stipulation.

FEBRUARY 24, 1866.

This day came the La Crosse & Minnesota Steam Packet Company, as claimant of said steamboat Keokuk, her boiler, engine, &c., and barge Farley, and presented its stipulation, with William F. Davidson as surety, in the sum of eight thousand dollars, conditioned that said claimant shall abide by and answer the decree of this court in this cause; and said claimant's stipulation is as follows:

12 District Court of the United States for the district of Wisconsin, in admiralty.

Whereas a libel was filed on the ninth day of February, in the year of our Lord one thousand eight hundred and sixty-six, by John Robson, against steamboat Keokuk, her engine, &c., and barge Farley, for the reasons and causes in the said libel mentioned; and whereas the steamboat Keokuk, her engine, &c., and barge Farley are in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from the monition now on file in said court:

Appearing personally the La Crosse & Minnesota Steam Packet Company as the claimant of the said steamboat and barge, and produced for surety William F. Davidson, and the said La Crosse & Minnesota Steam Packet Company and William F. Davidson, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of eight thousand dollars, unto the said John Robson, that the said La Crosse & Minnesota St. P'k't Co. and William F. Davidson shall abide and answer the decree of the said court in the aforesaid cause, and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, lands and tenements, wheresoever the same may be found to the value of the sum above mentioned.

LA + & MINN. STEAM P'K'T CO.,
By WM. F. DAVIDSON.
WM. F. DAVIDSON.

Taken and acknowledged this 24th day of February, 1866, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

William F. Davidson, party to the above stipulation, being duly sworn, deposes and says, that he is worth the sum of eight thousand dollars over and above all his just debts and liabilities.

WM. F. DAVIDSON.

Sworn to this 24th day of February, 1866, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

13 *Order for warrant of restitution.*

Whereupon it is ordered by the court, that a warrant of restitution be issued to restore the said steamboat Keokuk, her boiler, engine, &c., and barge Farley, to said claimant.

14 DISTRICT OF WISCONSIN, *ss*:

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the District Court of the United States for the district of Wisconsin, on the ninth day of February, in the year of our Lord one thousand eight hundred and sixty-six, by John Robson, against the steamboat Keokuk, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Farley, praying that the same may be condemned as forfeited to the said libellant; and whereas the said steamboat Keokuk, her boiler, &c., and barge Farley, have attached by the process of the said court, in pursuance of the prayer of the libel, and is now in your custody, in virtue of said process; and whereas, also, a claim has been interposed and filed in said court by the La Crosse & Minnesota Steam Packet Company, and such proceedings have been thereupon had, that by the sentence and decree of said court in this cause, made and pronounced on the twenty-fourth day of February, eighteen hundred and sixty-six, the said steamboat Keokuk, her boiler, engine, &c., and barge Farley, were adjudged to belong as claimed, and was ordered to be restored to said claimant; therefore you, the said marshal, are hereby commanded to release the said steamboat Keokuk, her engine, &c., and barge Farley, from arrest, and to deliver and return the same unto the said La Crosse and Minnesota Steam Packet Company; and what you have done in the premises do you make return thereof before the said Court of Admiralty forthwith, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the District Court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this 24th day of February, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] J. M. MILLER, *Clerk.*

15 *Return to warrant.*

Warrant of restitution returned:

"In obedience to the within warrant of restitution, I have this 24th day of February, 1866, released the steamboat Keokuk, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Farley from arrest, as commanded.

Fees, $12 00.

D. C. JACKSON, *Marshal*,
By W. S. JACKSON, *Deputy*."

Answer.

APRIL 23, 1866.

This day came the La Crosse & Minnesota Steam Packet Company, claimant, by its proctor, Mr. John W. Cary, and files its answer, as follows:

District Court of the United States for the district of Wisconsin, in admiralty.

The answer of the La Crosse and Minnesota Steam Packet Company, owner and claimant of the steamboat Keokuk and barge Farley, to the libel of John Robson against said steamboat and barge.

And now comes the La Crosse and Minnesota Steam Packet Company, owner of the steamboat Keokuk and barge Farley, and
16 for answer to the libel of John Robson against the said steamboat and barge, doth allege and propound as follows, to wit:

First. That the said La Crosse and Minnesota Steam Packet Company is a body corporate and politic, created and organized under and in pursuance of the laws of the State of Wisconsin, and is the true and bona fide owner of the said steamboat Keokuk and barge Farley, and that no other person or corporation is the owner thereof.

Second. That the allegations contained in the first article of said libel are substantially true.

Third. That the allegations contained in the second article of said libel are substantially true.

Fourth. That it is true, as alleged in the third article of said libel, that on or about the twenty-seventh day of October, A. D., 1865, the said steamboat and barge were at Winona, in the State of Minnesota, and that the said libelant was the owner of thirty-five hundred bushels of No. one spring wheat; but as to whether said wheat was of the value of four thousand three hundred and five dollars, this respondent has no knowledge or information sufficient to form a belief; that all the other matters contained in the said third article of said libel are not true as therein stated, and therefore this respondent denies the same.

Fifth. That the allegations contained in the fourth article of said libel are not true, and this respondent denies each and every one of the same.

Sixth. That as to the matters contained in the fifth article of said libel, the same are therein in great part falsely and untruly alleged and pleaded, for the truth and fact was and is, and this
17 respondent doth allege and propound, that on or about the 23d day of October, A. D. 1865, the said barge Farley, in tow of said steamboat Keokuk, both said barge and steamboat being then owned by this respondent, and the said barge Farley being then tight, staunch and strong, arrived at the port of Winona, in the State of Minnesota, and that said barge being in the like good order and condition, was on the day and year last aforesaid left by said steamboat at the dock of the elevator at the terminus of the Winona and St. Peter's railroad, at said city of Winona; that the said barge Farley, so lying at the said dock aforesaid, and being tight, staunch and strong as aforesaid, and properly moored and fastened to the dock aforesaid, was then and there left by the agents and servants of this respondent, the then owner thereof, and that said barge Farley, while left at said dock as aforesaid, and not being in the care or charge of any agent or servant of this respondent, the then owner thereof, was taken possession of by the said libelant, John Robson, without the knowledge or consent of this respondent or any of its agents or servants, and by him, the said John Robson, was loaded or caused to be loaded with about three thousand five hundred bushels of wheat in bulk, and that said loading was completed on or about the 27th day of October, A. D. 1865; that the said barge Farley, so laden as aforesaid by the said John Robson, remained at the dock aforesaid until the 27th day of October, A. D. 1865, and while so in charge of the said John Robson, and not in the possession of this respondent or any of its agents or servants, said barge so laden as aforesaid was, on the day last aforesaid, discovered to have sprung a leak and sunk, thereby wetting, injuring and greatly damaging the wheat which the said John Robson had, so as aforesaid, loaded or caused to be loaded upon her, which is the same wetting and damaging of wheat complained of in the said libel.

18 Seventh. That all and singular the premises are true; wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libelant in costs, and otherwise right and justice to administer in the premises.

LA CROSSE & MINN. STEAM P'K'T CO.
[SEAL.] WM. RHODES, *Sec't'y.*
JOHN W. CARY,
Proctor for Respondent.

DISTRICT OF WISCONSIN, *ss:*

Be it remembered, that on the 14th day of April, A. D. 1866, personally appeared before me William Rhodes, and made oath that he is one of the officers of the La Crosse and Minnesota Steam Packet Company, the respondent named in the foregoing answer, to wit, its secretary; that he has read said answer, and knows the contents thereof, and that the said answer is true to his own knowledge, ex-

cept as to the matters therein stated upon inform[illegible] that evening. and as to those matters he believes it to be true.

[SEAL.] HUGH CAMERON, barges over,

County Judge of the County of La Cros

State of

District Court of the U. S. for the district of Wisconsin[illegible]g, that I

miralty. [illegible]E," now

Libelant's testimony.

[illegible] are

JOHN ROBSON
vs.
S'BOAT KEOKUK AND BARGE FARLEY, LA CROSSE & Minn. P'k't Co. claimant.

[illegible]t.,
[illegible]s

Deposition of witnesses taken by consent before John M. Miller, clerk and U. S. com'r District Court Wisconsin, at Winona, Minnesota. Present: John H. Van Dyke, libelt's proctor, and Messrs. John W. Cary and Wm. Hull, proctors for respondents.

19 *Deposition of Joseph Ehle.*

Joseph Ehle, witness for libelant, being sworn, deposed and said: My age is 22 years; and occupation, at present, is wheat buying; my occupation in Oct. last was 2d clerk in La Crosse and St. Paul Packet Line. On Oct. 27th last was on Keokuk or Favorite; changed boats about that time, and think I was on the Keokuk. The duties of 2d clerk was to receive and discharge freights; collect from deck passengers their fares, and to stand watch during absence of 1st clerk. 1st clerk signed the bills of lading for wheat shipped in bulk in barges sometimes, and sometimes I did. I signed for barges during the absence of 1st clerk, sometimes the captain. I don't know that the captain signed any last year. I was on the Favorite, possibly the Annie Johnson, but I think the Favorite, on the 29th July last, as 2d clerk.

Quest. Who signed the bills of lading for the barge D. Thayer, then running with the steamer Favorite, for 8,000 bushels of wheat, shipped by John Robson, consigned to Angus, Smith & Co.?

(Objected to as incompetent and immaterial.)

Ansr. I can't tell you, because we were carrying 2 or 3 barges down daily, and I can't tell without looking at the books.

Quest. Will you now look at bill of lading here shown you for cargo of wheat in above-named barge, and tell us whether the wheat therein mentioned was shipped on board said barge at that time, what was done with the wheat, and who signed bill of lading therefor, and annex to your deposition a copy of said bill?

(Objection same as last above.)

Ans. I believe that to be my signature to the bill of lading now shown me, a copy of which is hereto annexed, marked "A." They were in the habit of coming up to the office and having bills signed

Sixth. That as to the matters contained in the fifth article of said libel, the same are therein in great part falsely and untruly alleged and pleaded, for the truth and fact was and is, and this
17 respondent doth allege and propound, that on or about the 23d day of October, A. D. 1865, the said barge Farley, in tow of said steamboat Keokuk, both said barge and steamboat being then owned by this respondent, and the said barge Farley being then tight, staunch and strong, arrived at the port of Winona, in the State of Minnesota, and that said barge being in the like good order and condition, was on the day and year last aforesaid left by said steamboat at the dock of the elevator at the terminus of the Winona and St. Peter's railroad, at said city of Winona; that the said barge Farley, so lying at the said dock aforesaid, and being tight, staunch and strong as aforesaid, and properly moored and fastened to the dock aforesaid, was then and there left by the agents and servants of this respondent, the then owner thereof, and that said barge Farley, while left at said dock as aforesaid, and not being in the care or charge of any agent or servant of this respondent, the then owner thereof, was taken possession of by the said libelant, John Robson, without the knowledge or consent of this respondent or any of its agents or servants, and by him, the said John Robson, was loaded or caused to be loaded with about three thousand five hundred bushels of wheat in bulk, and that said loading was completed on or about the 27th day of October, A. D. 1865; that the said barge Farley, so laden as aforesaid by the said John Robson, remained at the dock aforesaid until the 27th day of October, A. D. 1865, and while so in charge of the said John Robson, and not in the possession of this respondent or any of its agents or servants, said barge so laden as aforesaid was, on the day last aforesaid, discovered to have sprung a leak and sunk, thereby wetting, injuring and greatly damaging the wheat which the said John Robson had, so as aforesaid, loaded or caused to be loaded upon her, which is the same wetting and damaging of wheat complained of in the said libel.

18 Seventh. That all and singular the premises are true; wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libelant in costs, and otherwise right and justice to administer in the premises.

LA CROSSE & MINN. STEAM P'K'T CO.
[SEAL.] WM. RHODES, *Sec'y.*
JOHN W. CARY,
Proctor for Respondent.

DISTRICT OF WISCONSIN, *ss:*

Be it remembered, that on the 14th day of April, A. D. 1866, personally appeared before me William Rhodes, and made oath that he is one of the officers of the La Crosse and Minnesota Steam Packet Company, the respondent named in the foregoing answer, to wit, its secretary; that he has read said answer, and knows the contents thereof, and that the said answer is true to his own knowledge, ex-

cept as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

[SEAL.] HUGH CAMERON,
County Judge of the County of La Crosse and State of Wisconsin.

District Court of the U. S. for the district of Wisconsin.—In admiralty.

Libelant's testimony.

JOHN ROBSON
vs.
S'BOAT KEOKUK AND BARGE FARLEY, LA CROSSE & MINN. P'K'T CO. claimant.

Deposition of witnesses taken by consent before John M. Miller, clerk and U. S. com'r District Court Wisconsin, at Winona, Minnesota. Present: John H. Van Dyke, libelt's proctor, and Messrs. John W. Cary and Wm. Hull, proctors for respondents.

19 *Deposition of Joseph Ehle.*

Joseph Ehle, witness for libelant, being sworn, deposed and said: My age is 22 years; and occupation, at present, is wheat buying; my occupation in Oct. last was 2d clerk in La Crosse and St. Paul Packet Line. On Oct. 27th last was on Keokuk or Favorite; changed boats about that time, and think I was on the Keokuk. The duties of 2d clerk was to receive and discharge freights; collect from deck passengers their fares, and to stand watch during absence of 1st clerk. 1st clerk signed the bills of lading for wheat shipped in bulk in barges sometimes, and sometimes I did. I signed for barges during the absence of 1st clerk, sometimes the captain. I don't know that the captain signed any last year. I was on the Favorite, possibly the Annie Johnson, but I think the Favorite, on the 29th July last, as 2d clerk.

Quest. Who signed the bills of lading for the barge D. Thayer, then running with the steamer Favorite, for 8,000 bushels of wheat, shipped by John Robson, consigned to Angus, Smith & Co.?

(Objected to as incompetent and immaterial.)

Ansr. I can't tell you, because we were carrying 2 or 3 barges down daily, and I can't tell without looking at the books.

Quest. Will you now look at bill of lading here shown you for cargo of wheat in above-named barge, and tell us whether the wheat therein mentioned was shipped on board said barge at that time, what was done with the wheat, and who signed bill of lading therefor, and annex to your deposition a copy of said bill?

(Objection same as last above.)

Ans. I believe that to be my signature to the bill of lading now shown me, a copy of which is hereto annexed, marked "A." They were in the habit of coming up to the office and having bills signed

2 or 3 hours before the boat would leave. We generally signed their book when presented, sometimes 5 or 6 hours before the boat
20 would leave. The mate and master would know where the barges were, I would not know whether the barges were loaded or not. The bills of lading were kept in one corner of our desk where they were kept, and they would not be looked at again until we got under way, going down.

Quest. What was done with the wheat mentioned in this bill of lading?

(Objected to for reason that the witness has not sworn that he knows this wheat was shipped on the barge, and that he has no personal knowledge about it.)

Ans. It was delivered at La Crosse elevator; am not positive that it was taken in tow that evening. Do not know what I did with that particular bill of lading. At the time of signing the bill, for about 2 weeks, I was working as 1st and 2d clerk on board of Favorite. It was either July or August that I was alone.

Quest. Now look upon bill of lading of Aug't 17, '65, of the steamboat Favorite and barge Davidson, and state who signed the bill.

(Same objection as last.)

Ans. I did. I was clerk on Favorite at that time; was hired as 2d clerk, and acted as 1st clerk when he was away. Acted as 1st clerk for about 10 days during the month of August. I mean by clerk, at that time, 1st or 2d clerk. (Bill of lading offered in evidence, and a copy thereof hereto annexed, marked exhibit "B.") Can't say whether the 1st clerk was on board or about at that time; possibly he was there, judging from the books.

Quest. When you were the only one on the boat at the time a bill of lading or shipping bill was presented, who received the bill of lading from the shipper?

Ans. If no one else was there, I did. If I was absent from the office, and they would leave their bills of lading, and would come back again and bring their shipping book and get our signature.

Ques. In case the 1st clerk would be up town, who would receive the bill when brought by a shipper?

Ans. I did. Sometimes I would tell the shipper to wait
21 until Mr. Bryant would come, and that he would sign it. I can't say that that wheat in the Favorite and Davidson went forward on the date of the bill of lading or not. Sometimes we had a big tow, and would leave some of the barges until next trip. Usually left a watchman on the barges.

Quest. Now look upon shipping bill, marked exhibit "C," for the s'boat Favorite and barge Hastings; also upon shipping bill, marked exhibit "D," of the s'boat Favorite and barge Rumsey. State who signed those bills of lading, and in what capacity was the person signing them acting on board of said boat.

(Objected to as incompetent and immaterial.)

Ans. I signed them as 2d clerk.

Quest. State whether or not the wheat mentioned in those bills of lading went forward.

Ans'r. I can't state whether they went forward that evening. Other boats might have taken them in the barges.

Quest. Was any difference made in regard to leaving barges over, whether they were signed by the capt., 1st or 2d clerk?

(Objected to as above.)

Ans'r. No; it made no difference about their leaving, that I knew of.

Quest. Now look upon shipping bill, marked exhibit "E," now here shown you, and state to whom that bill was delivered.

Ans'r. I don't know that I ever saw this bill before. There are so many shown me that I cannot recollect them.

Quest. Do you recollect of the Farley sinking at Winona in Oct., 1865, and can you state to whom the shipping bill for that cargo was delivered?

(Objected to as leading, immaterial and incompetent.)

Ans'r. I recollect the sinking of the Farley. Mr. Robson's clerk came down while I was discharging freight, and gave me some bills while I was out on the levee. It was snowing very hard at the time, and did not open the bills for fear of the rain soiling them. Put them in my overcoat pocket; went on board in one-half or an hour afterwards, being busy until that time; took the bills out, and
22 laid them on the desk. That was when we were at the lower landing. At that time I went on board just as the boat was sounding her ready-bell. She had been waiting for me to check up my freight. Then went up to the depot, where we had a large lot of freight to put out there; was there working until 9.30 or 10 o'clock before we got all our freight discharged. I put those bills in the usual place in the office.

Quest. You state that when the boat rang her ready-bell you then went up to the depot. Where was the 1st clerk?

Ans'r. At that time he was in his office. When I received the bills he was not on board, and I think he was at Seevey's office. I was not over 10 feet from the staging of the boat when the bill were handed me. When I got on the boat to go up to the depot Mr. Bryant was in the office of the boat.

Quest. You state that when the boat rang her ready-bell that she started and went up to the depot from the lower landing. How far is the depot to which you went from the wheat elevator?

Ans'r. About 200 yards.

Quest. Do you know how long it was after the bill or bills were delivered to you by John Robson before the clerk came on board?

Ans'r. From a half to an hour. It might have been 10 or 15 minutes. I was very busy, and might not have noticed him. The clerk was not on board at the time. I signed the bills in any place where I could see him.

Quest. What was the common habit of the capt. of the Keokuk, and Bryant, the clerk, to do as soon as the boat got to her landing?

(Objected to as immaterial.)

Ans'r. The capt., when we got on shore, generally when we had barges to tow, generally went out and looked for men to load the

barges, if we had not men; that is, when we had barges in tow. If the barges were here waiting he generally went immediately to the depot and attended to their loading. If we had no barges at all he staid upon the boat. He was on the boat, on the roof, that
23 evening when we were discharging freight. I can't state where he went when we got to the depot; think he staid upon the boat. The boat laid at the depot from 7.30 to about 10 o'clock. It was blowing and snowing very hard that night. The clerk usually staid on board when at the lower landing. When we got to the depot he went in and settled up his business of the trip before. He has wife and daughter, and resides in central part of Winona, about 5 blocks back from landing. When we got in here in good season he would go home; sometimes he would stay on board. I did his business on the boat during his absence.

Cross-examined.

I am in employ of R. H. F. Morgan at present. I could not have seen Mr. Bryant, if he was in office, from where I was standing, as it was very snowy. I am not positive whether he was on the boat or not at the time this bill was handed me. Think he was at Seevey's office. Seevey's office is about 150 feet from where the boat lay. Mr. Benton was the clerk who gave me this paper. I don't think he went on the boat, but went away to his horse and buggy. I am not positive, but think he said, "Here are the bills." I was very busy; had lantern in one hand and book in the other. This was about 5 and 6 o'clock p. m. It was snowing, and had to use lantern to distinguish marks on the boxes.

Quest. When bills of lading are presented, are they accompanied with a book containing a copy of the bill which is receipted or signed by the clerk?

Ans'r. Yes, generally. Sometimes the bills are brought without the book.

Quest. Was anything said to you there from which you knew what this paper was or purported to be?

(Objected to as immaterial and inadmissible.)

Ans. There was not, to the best of my knowledge.

24 Quest. Was any book brought for your signature, or the signature of the clerk or captain for this barge before the boat left that night?

(Same objection.)

Ans'r. None bro't to me, and have no knowledge that any was brought to any one.

Quest. You have stated the reason why you did not look at this paper when it was handed you. Will you state it again, as it was not taken?

Ans'r. The reason is, usually when these bills of lading were presented, a shipping-book was generally with them. There was none that evening, and I had no time to attend receiving freight, as I was discharging. It is not customary to do both at the same time.

The wind, I think, was coming from NW. Don't recollect as it was much of a wind. The snow was falling fast and thick. Left Winona for La Crosse about 12 o'clock that night. It was snowing some, I think. Was in bed until I was called up at Trempeleau. I am sure I placed this bill on the clerk's desk before leaving Winona. I am not positive, but think when I went into the office I said, "Bryant, here are those bills," and laid them on the desk with that remark, as I usually do. This was after I got on the boat, after discharging freight at the lower landing.

Quest. Did not those bills remain in your overcoat pocket until after the boat started on her way to La Crosse, and did you not, while on the way down, take them out of your pocket and give them to the clerk.

Ans. No, sir; I did not. No, they did not remain in my pocket. I don't think the Keokuk had any barge in tow that night.

Quest. Do you know that either the captain or the clerk had any knowledge of that paper until after they left Winona for La Crosse?

(Objected to as immaterial and inadmissable.)

Ans. I don't know whether they knew or not. Mr. Bryant, at the time I laid those papers on the desk, was ticketing passengers.

25 Quest. Did you know the contents of the papers?

Ans. I did not.

Re-examined.

Quest. How long after you delivered these bills to Bryant, the clerk, before the boat left Winona that evening for La Crosse?

(Objected to, that the witness swears he left papers and not bills.)

Ans'r. About 5 hours.

Quest. Did you deliver to Bryant, the clerk, at that time the same bills that Mr. Robson's clerk delivered you?

Ans'r. Yes. I delivered them at the office, as I have before stated. I can't say when Bryant went to bed, for I retired as soon as I went aboard. I first knew that the Farley had sunk when I got to La Crosse. It was not unusual to receive freight at the lower landing at Winona. I was called up when we got to Trempeleau. Afterwards had a short sleep of 2 hours; was then up until we got to La Crosse. I did not know the contents of the bills that Robson's clerk gave me.

Quest. What property besides wheat was Mr. Robson shipping down the river?

(Objected to as immaterial.)

Ans. I don't know that I ever received anything from him but wheat when I was on that line.

Quest. Was he a large or small shipper of wheat?

(Same objection as above.)

Ans. He was considered a large shipper by river men. I think he was shipping last season exclusively by that line, (Davidson's line.) That is the same line as the La Crosse and Minne Steam P'k't Co.

Quest. Had you any doubt in your mind what those bills that Robson's clerk handed you were?

(Objected to as immaterial.)

Ans. I don't think I paid any attention to the bills, as I put them in my pocket to keep them out of the snow.

26 Quest. The question is, not whether you looked at the bills, but whether you had any doubt in your mind but that they related to the shipping of wheat.

(Objected to as above.)

Ans. Don't think I gave the bills a thought at that time. It was Mr. Bryant's business to attend to them, if he was there. No receipt was asked for.

Quest. Why did you take the bills?

(Objected to for the reasons given by the witness to the three preceding questions.)

Ans. I received the bills for the reason that I received all the bills while I was on the levee, and when my freight was discharged I attended to the bills for freight to be received.

J. H. EHLE.

Subscribed and sworn to before me this 21st May, 1866.

J. M. MILLER,
Clerk and U. S. Com'r, Wis.

Deposition of John Robson.

John Robson, witness for libellant, being sworn, deposed and said:

My age is 36 years; residence is Winona, and occupation is grain business; resided in Winona for 5 years this spring; business the same, buying and selling and shipping wheat. I know the La C. & Minne Steam P'k't Co.; have known them for 4 or 5 years under that name. Have shipped wheat by them during that time up to the close of last season. Do not do business with them. Ship by the northern line and Savannah line. My shipments with the La C. & Minne Co. were almost daily, sometimes 2 or 3 times a day. The wheat was principally shipped in barges.

Quest. State generally the manner in which barges were furnished to you by the company; how and by whom loaded, and generally the mode in which you have done your business with the company.

Ans. Barges were sometimes sent me direct; sometimes I got them from the boat captains, and sometimes picked them up on the shore, wherever I found them. It was my practice to take barges

27 and load them whenever I found them disengaged, when I wanted them. Sometimes I loaded them myself; but when the boats were here I called on the boats for hands, and presented the bill for trimming, hauling, loading, &c., to the boat. The bills were always paid. I quite frequently took the barges. This was done when the boat was not here. When the boat was here he preferred them to take charge of the loading. If the boat was behind time I always took the barges if I could get them. The usual charge of ½ cent per bushel was paid to me for loading. The company made no objection to this mode of proceeding, except since this Farley was sunk; and in conversation with Capt. Davidson he said he did not consider a barge in charge of any particular boat until she was

hitched to it. Never heard this objection made before the Farley sunk.

Quest. What has been the custom of other shippers along this river in regard to shipping?

(Objected to as immaterial.)

Ans. I think they are about the same as my own. Have not conversed with other shippers by this line on that subject.

Quest. When you took possession of the barge and loaded her, what did you then do?

Ans. I always left a man on board to watch and pump her, and sent the charge to the boat that took the barge in tow. I kept men on her until the boat got here, and then turned her over to the officers of the boat. Gave the barges to them by getting the bills signed, or telling them, or giving them memorand bills. They are copies of my bill-book unsigned. It is the custom of the boats to take bills and give me one signed; one is my receipt. They give one to the railroad and keep one. A memorandum bill is a copy of my book, except that it is not signed. They generally signed our bills in the bill-book; but on some occasions that have occured frequently, they took our memoranda bills and signed our book
28 on the next trip, and paid our bills. This was the exception.

It occurred during the busy season quite frequently. After I had notified the boat that the barge was ready, I did nothing more. The men I had on the barge were taken off and the bills paid, all of which was presented to the boat for payment. We are in the habit of notifying that the barge is loaded, either the captain or the clerks. No objection was ever made to me of this mode of notice.

Quest. How often have you notified 2d clerks of boats as compared with other officers?

(Objected to as incompetent.)

Ans. I should think nearly as often as any other officer, perhaps oftener. for when they had business at my office the 2d clerk would generally come; sometimes the captain would come. No objection was ever made to notifying the 2d clerk; upon such notification they would take the barges when they were ready.

Quest. Were you ever informed by any agent or officer of the company or of any of their boats of the adoption by them of any rule or rules to be regarded by shippers in taking possession of or loading the barges or any of them? If yea, what was the rule different from the mode pursued by you regarding the barges?

Ans. Never knew of any particular rule different from the mode I pursued. I loaded the barge Farley that sunk about the 27th Oct. last. I think the Keokuk brought her here.

Quest. Will you state the facts in regard to her loading and what notice you served of such loading upon officer or agent of the boat and what officer?

Ans. I took the Farley at about 4 or 5 o'clock p. m. The Keokuk was behind time; had waited for her all afternoon in order to have the barge loaded so that she could take it at her usual time of leaving, which was about 6½ o'clock; could not wait any longer to have it

go that night. When the boat came, which was about 6
29 o'clock, we had memoranda bills made out, and I with my book-keeper drove down to where the boat landed, and my book-keeper gave those bills to the 2d clerk of the boat, who was then either on the stage plank or near it, checking freight. This was the notice I gave them.

Quest. Will you look upon the bill here shown you and marked exhibit "E" and state whether or not it is a duplicate or copy of the 2 duplicate bills delivered to the clerk of the boat at that time?

Ans. I think it is; nevar looked at them myself. It is a correct copy of our books; it is the right am't, barge boat and date and am't of wheat shipped. There was 3,500 bushels, just as the bill states, loaded on the Farley at that time. When these bills were delivered by my book-keeper to the clerk of the boat I was about 40 or 50 feet away. The steamer Keokuk was distant from the barge at that time about 50 rods. When the steamer moved up to the depot she was about 500 feet distant from the barge; I think the barge laid there 2 or 3 days previous to her loading; she was brought from La Crosse, I think. Before she was moved up for loading she lay about 200 feet from the elevator; loaded her with No. 1 spring wheat; it was worth $1 23, I think; so I made out the bills; I know that was the price here; I left the wheat in their charge, as I suppose.

(Last answer objected to as incompetent.)

The next I heard of it it was sunk in front of the elevator, just where it was loaded, apparently had not been moved. The wheat was sold and partially taken away.

Quest. What was its condition?

(Objected to as immaterial.)

Ans'r. With the exception of a very little it was all under water.

Quest. For how much was it sold?

(Objected to.)

Ans'r. $575, five hundred and seventy-five doll's; I don't
30 think it was worth $575, but it was sold for that much. The La Crosse and Minne. Packet Company have not paid me anything for that wheat. Have known the Farley for 6 years, ever since I have been here; may have loaded her 20 times; have not loaded her for a year past often, but previously very often; have not loaded her or seen her on the river this year; I don't think she has been in commission since she sank at the elevator; I think she was in regular commission that season before she sunk; I think she was a very poor barge; she was too old to carry wheat for several years. It did not require much pumping when either moving or hitched to the dock; it required one man to pump her occasionally. She had a cargo box on her. She compares very unfavorably with the barges now constructed and used by this company. The new barges, some of them, have cargo boxes and some have not; some of the new ones have cargo boxes. I can't say how long this barge was with the Keokuk; they were changed frequently; the Keokuk brought her up here.

Cross-examined.

I said that when the boats were here they they took charge of the loading of the barges; when the boats were not here I took the barges and loaded them under my supervision, and after loading them I kept a man in charge of them until I notified the boat. I don't consider it safe to leave a loaded barge alone in the river for any length of time. I had a man in charge of her until the boat arrived here, for perhaps a half hour after her arrival; I had a man on her, one of my own men, trimming, pumping her, &c. The barge was finished loading between 6 and 7 o'clock p. m. I left the barge; did not see her after 5 o'clock before she was loaded; saw her when she was first taken up there. When the loading was completed
31 my men left her. No man that I left in charge of her; who the boat may have had I don't know. I do not know that they had any one in charge of her; I do not know of any one being in charge of her after she was loaded; I had no man in charge; she was left about 200 feet below the elevator before she was loaded; she had been there 2 or 3 days; I did not see the captain of the boat that night.

Quest. Did you ever have any permission from Capt. Sencerbox or any of his officers to load that barge?

(Objected to as immaterial.)

Ans'r. I had no permission from him to load that barge. His boat was not here.

Quest. You have stated that you took barges that were left by the company and loaded them sometimes. Did you not understand that it was the regulation of the company in such cases that you were responsible for the barge, and that the company was not so responsible until the same was taken in tow by their boat?

Ans. I understood no such rule or regulation; it was never mentioned to me. I have been requested to take barges and load them whenever I could find them; have been so requested by some of the captains, Capt. Newton in particular. I don't think of any one else particular except Capt. P. S. Davidson of La Crosse. Capt. Newton commanded the Mankato and the Favorite last year. Capt. Newton used to do our business here last year until he was taken sick in September; he was in command of one of the boats in the line between this place and La Crosse—I mean the business in his line. Don't recollect when Capt. Newton left, but think early in the fall, some time in September last. Capt. Sencerbox took Newton's place on the boat plying between here and La Crosse. I had never any such permission from Capt. Sencerbox; never asked him. This was a stormy, snowy night; don't know when the boat left; about daylight was told, about 5 o'clock next morning; was told barge sunk
32 about 3 o'clock in the night, between the time we left it and daylight. Dr. Ford, agent of the ins. company, sold that wheat, I suppose, for the insurance company. I received $575 proceeds from that sale.

Quest. Have you received from the ins. co. the value of this wheat that was on board of the Farley?

(Objected to as immaterial and inadmissable.)

Ans'r. I have received from Mr. Durand amounts equal to the balance of the bill after deducting the $575 as an advance pending this action; rec'd it from him as agent of the ins. company.

Quest. Upon what conditions did you receive it?

(Same objection as last above.)

Ans. The conditions are that if I fail to collect from this Packet Company, then I refund to Mr. Durand the amount advanced; in case I do collect then I refund or transfer the amount collected or the amount advanced; this arrangement is in writing.

Quest. When was this arrangement made?

(Same objection as last above.)

Ans'r. It was made during the month of December last; can't tell the exact date; think it was the forepart of December; the money was paid at that time and the amount stated. It was the value of the wheat at $1 23 cents per bushel less the $575 received on sale of the wet wheat. I think I have not the writings; may have a copy, but think not; I left the writings with Mr. Durand.

Re-examined.

I saw them raising the Farley and saw her after she was up.

Quest. What was the reason of her sinking?

Ans'r. I think she was too old to carry a full load of anything or of wheat. I think with a moderate load she would leak all the time, causing constant attention to the pumps. I know the men did not like to tow her.

(Objected to as an opinion and hearsay evidence.)

33 The reason they did not like to tow her was that it gave too much trouble to look after her.

(Same objection as above.)

She was troublesome because she leaked. She had sunk once before.

(Objected to as above.)

Quest. Did you hear any congratulations amongst the captains when she did sink finally?

(Objected to as hearsay.)

Heard one captain exclaim "thank God for that." One of the best of the captains of this line; this was Capt. West.

Cross-examined.

I have known the Farley for 6 years; shipped in her frequently up to about a year; have heard the reports that she was troublesome within the last year and a half. My judgment is principally based upon what I have seen of her, for I have known her for 6 years and always had to pay some attention to her and always considered her

weak and a poor barge. She has not been fit to carry wheat for a year.

JNO. ROBSON.

Subscribed and sworn to before me this May 21st, A. D. 1866.
J. M. MILLER,
U. S. Comm'r, Wis'n.

Deposition of A. E. Burden.

E. A. Burden, witness for libelant, being sworn, deposed and said: My age is 20 years; reside in Winona, and am at present in employ of Mr. Robson as book-keeper; been in his employ in that capacity for 2 years 1st May last.

Quest. Now look upon the paper marked exhibit "E," annexed to deposition of John Robson, and state whether you have seen the paper of which it is a copy? and if yea, state when and where.

Ans. Have seen it before; saw it at the date it was made out in the bill book of John Robson, or the duplicate of this.

34 Quest. State whether a bill or bills of which this is a duplicate or copy were delivered to any officer of the s'boat Keokuk; if yea, by whom so delivered, and when so delivered.

Ans. I remember of delivering two bills of lading, duplicate of this exhibit or about Oct. 27, 1865, to the 2d clerk of the s'boat Keokuk on the levee at Winona. The s'boat at that time was lying at the levee; at that time the 2d clerk was employed in checking freight off of the boat. Did not take any receipt in bill book at that time.

Quest. What was the custom of receipting bill books of John Robson at that time, whether at the time of shipment, on the return trip of the boat, or both or either, and how was the business done.

(Objected to; first, that it does not appear that there was any custom; 2d, that it is incompetent.)

Ans. Both modes were customary, but one of signing the duplicate bills when the property was surrendered was general custom.

Quest. When memoranda shipping bills were surrendered and the shipping book not signed by any agent or officer of the company at the time of shipment, when would the shipping bill be signed?

(Same objection as last above.)

Ans. Generally the day following. Invariably, I may say. That was that the day boat made her return trip; her cargo in the mean time would have been carried away. It would be difficult to say how frequently this business was done in this way, but I think quite frequently, this getting bills signed on the return trip. I only delivered the bills; I don't know who took care of the barges; I was in the office, and I don't know who took care of the barges. As far as my knowledge goes, the barges were all taken away when the bills were signed, excepting this barge Farley.

Quest. Do you know of any instance where the barge and her cargo were not taken away by the boat when the bills were delivered?

35 (Objected to for the reason that the witness has testified that he knew nothing about the barges or taking them away.)

Ans. I do not.

Quest. Do you know of any instance of any master, owner or agent of this company objecting to this mode of delivering bills or of doing business with them.

(Objected to as immaterial and incompetent.)

Ans. No, sir; I do not.

Quest. Do you know of any instance in which a barge, except the Farley, was permitted to lay at the wharf after the boat was so notified of the shipment of cargo.

(Objected to for the reason that the question is a species of negative pregnant, seeking for an affirmative inference from the witnesses want of knowledge of a matter of which he has informed us he had no charge or knowledge.)

(Libellants counsel hereby excepts and objects to the objection taken, upon the ground of an effort to misconstrue the evidence positive in its character, as to the mode of doing business by the libellant with this company, its agents and officers, and to the mode in which it was done, if objection had made by them or either of them, either writing or otherwise, must necessarily and unavoidably have come to the knowledge of the witness in view of his relation to the business of the libellant.)

A. I know of no such instance.

Quest. If a barge had been permitted to lay over at the wharf after such notification of shipment of cargo, would you have known the fact, and if yea, how?

(Objected to as incompetent.)

Ans. I think I should; doubtless by information received at the office or through the warehouse or office employees.

(Objected to as not evidence.)

Quest. In case of shipment where memoranda bills of shipment were delivered only, who attending to getting the shipping bills signed in the book upon the return of the boat.

36 Ans. I did generally.

Quest. If in case of such shipment if the shipping bill in the shipping book had not been signed upon the return of the boat by the proper officers of the boat, would you have had knowledge of that fact, and if yea, how?

Ans. I should, it was part of my business to see that such things are not neglected. I had access to the correspondence in Mr. Robson's office. I never received or saw any letter objecting to this method of shipping from any officer or agent of this company.

Ques. Do you know of the shipment of wheat on or about Oct. 27th, last mentioned in exhibit "E."

Ans. Yes, sir.

Quest. Do you know the manner in which Mr. Robson took possession of the Farley, and loader her. If yea, state what it was?

Ans. I do not.

Quest. Will you state what the course of his business of shipping

wheat in this company's barges was during the period of your employment with him?

Ans. The barges were left usually upon his order and under his direction. Were loaded by him, if at the elevator by an order upon the elevator for the required amount. If loaded at any other place in town, under the direction of his own men or employees.

Quest. When empty barges were left by a steamer of this line at this port, what was Robson's course in regard thereto when he had grain to ship.

(Objected to as immaterial.)

Ans. He took the barge he wished and loaded it.

Quest. What did you do in such case during the absence of Mr. Robson if you made shipments?

(Objected to as immaterial.)

Ans. I have no recollection of such case during his absence.

Quest. Do you know, during the course of your employment with Mr. Robson, of any objection being made by this company or
37 any of its officers or agents to his so taking their barges and loading them, except in the instance of the Farley after she sunk.

Ans. I did not.

Quest. What time in the day did you deliver the duplicate memoranda bills of shipment of the Farley's cargo to the 2d clerk of the steamer Keokuk?

Ans. About 7 o'clock p. m.; between 6 and 7 o'clock. After delivering those bills the s'boat Keokuk remained at this port from what I learned, until morning.

(Respondents object to that answer as not being evidence competent to be given.)

Quest. When and where did you next see the Farley, and what condition was she and her cargo?

Ans. Saw her following morning about 8 o'clock in front of elevator sunk. Some dry wheat in her; can't say how much, a little; one end of barge was out of the water; good depth of water there for barges.

Quest. During your employment by the libellant, Robson, to what office or officer of the boat did you apply to to have your shipping bills signed, and who did sign them usually?

Ans. Ordinarily the 1st or 2d clerk. Sometimes by the captain.

Quest. When you applied to 2d clerk of boat to sign the bills or to take the delivery of memoranda shipping bills, were you ever referred by him to any other officer of the boat?

Ans. No, sir.

Quest. Was any objection made by any officer of this line to paying the bills for loading them when the barges had been taken by Robson and loaded without any previous order therefor, that is, any objection made on that ground?

Ans. No objection.

Cross-examined.

I did not inform the 2d clerk when I delivered him those bills what they contained; when I handed him the bills I think I said,
38 "These are the bills of that barge." I did not hand the shipping book for signature because it was a stormy night, and late and inconvenient to do so. I don't recollect what he said when I handed him the bills, some asserting remark, I think. I can on reference to the bill book recollect instances where barges of wheat were delivered on bills without having the bill book signed.

Quest. Can you state any such instance of the Keokuk or Favorite while Capt. Sencerbox was commanding her?

(The libellant here objected to the limitation in the question to the custom merely to boats that Capt. Sencerbox commanded, and especially for the reason that Capt. Newton was in command of the boat that ordinarily ran to this port.)

Ans. I know there are such cases during that fall season, can't say how many; any where from 10 to 20. I think I can refer to some I now think were ones, but cannot designate them positively.

Quest. Point them out on the book.

Ans. On reference to the book I cannot find any one I am able to refer to.

Quest. Can you find any one while Capt. James Newton was commanding either of those vessels?

Ans. The shipment of Aug. 17th, of 7,364 bushels consigned to Angus, Smith & Co., I think is one instance. I see nothing else, sir.

Quest. What makes you think the bill of Aug'st 17th is one of that class?

Ans. It is based entirely upon my recollection; nothing special to make me recollect it. I did the general business; I frequently had the superintending of loading barges.

Re-examined.

Quest. Is there anything on the shipping book from its inspection that will determine you what bills were signed at time of shipment; and what signed at return of the boat?

39 Ans. There is not.

E. A. BURDEN.

Subscribed and sworn to before me this May 21st, 1866.

J. M. MILLER,
U. S. Com'r, Wisconsin.

John Robson, re-called:

Quest. Will you state what specific shipments you now recollect were made without the bill book being signed at the time of shipment, and then further state whether the matter was of frequent occurrence or not, and if yea, how frequent or about how frequent?

(Objected to as leading and immaterial.)

Ans. Here's one; Dec. 2, '65, bill was made out for Clara Hine, but Addie Johnson took it, barge Rumsey, 5,225 bushels in barge Rumsey. Here is one same date, same boat, barge Newton, 5,798 bushels made to s'boat Addie Johnson, and she took it. These are the only 2 cases I can swear to; there are others, but I cannot go back and pick them out. The bill whether signed to-day or to-morrow bears no date or evidence of its signing. There are others, both with Newton and Sencerbox, but I could not now identify them, These were done under circumstances that drew my attention to it. The office was locked up and I could not get at the book that makes me remember it.

Quest. Was there ever any objection made by any officer or agent of this company to receive shipments from you on delivery of the memoranda bills of shipment upon the ground that your shipping book was not present for you to sign.

Ans. Never any objection on that ground; they were always satisfied with anything in that respect that satisfied me.

JNO. ROBSON.

Subscribed and sworn to before me May 21st, 1866.

J. M. MILLER,
U. S. Com'r, Wisconsin.

40 *Schedule "A."*

WINONA, MINN., *July* 29, 1865.

Shipped in good order and condition by John Robson, for account of him on board the steamer Favorite whereof Newton is master, the following articles, as here marked and described, to be delivered in like good order and condition, as addressed on the margin (the unavoidable dangers of river and fire only excepted) or to his or their assignees, at the rate of 26 cents per bushel to Milwaukee. Freight and charges to be paid, as noted below upon the actual and complete delivery of said goods or freight to said consignee or their assigns.

In witness whereof the owner or clerk of said boat hath affirmed to 3 bills of lading all of this tenor and date, one of which, being accomplished the other to stand void.

Marks.	Articles.	Weight.

To Angus Smith & Co., barge D. Thair, 800 bushels wheat.

EHLE.

Exhibit "A" referred to as annexed.

J. M. MILLER, *Com'r.*

Schedule "B."

WINONA, MINN., *Aug.* 17, 1865.

Shipped in good order and condition by John Robson, for account of him on board the steamer Favorite whereof Newton is master, the lollowing articles, as here marked and described, to be delivered in like good order and condition, as addressed on the margin (the unavoidable dangers of river and fire only excepted,) or to his or their assignees, at the rate of 26 cents per bushel to Milwaukee. Freight and charges to be paid as noted below, upon the actual and complete delivery of the said goods and freight to said consignees or their assigns.

In witness whereof the owner or clerk of said boat hath affirmed to 3 bills of lading, all of this tenor and date, one of which
41 being accomplished the other to stand void.

Marks.	Articles.	Weight.

Barge P. S. Davidson.....3164 bushels wheat
" " .....4200 " "

7364, more or less.

To Angus Smith & Co., Milwaukee. EHLE.

Exhibit "B." referred to as annexed.

J. M. MILLER, *Com'r.*

Exhibit "C."

WINONA, MINN., *Aug.* 21. 1865.

Shipped in good order and condition by John Robson for account of him, on board the steamer Favorite whereof Newton is master, the following articles, as here marked and described, to be delivered in like good order and condition as addressed on the margin (the unavoidable dangers of river and fire only excepted,) or to his or their assignees, at the rate of 26 cents per bushel to Milwaukee. Freight and charges to be paid as noted below, upon the actual and complete delivery of the said goods and freight to said consignees or their assigns.

In witness whereof the owner or clerk of said boat hath affirmed to 3 bills of lading all of this tenor and date, one of which being accomplished the other to stand void.

Marks.	Articles.	Weight.

Barge Hastings, 3800 bushels wheat, more or less, to Angus Smith & Co., Milwaukee.

EHLE, *C'k.*

Exhibit "C." referred to as annexed.

J. M. MILLER. *Com'r.*

Exhibit "D."

WINONA, MINN., *Sept.* 19, 1865.

Shipped in good order and condition by John Robson, for account of himself, on board the steamer Favorite, whereof is master, the following articles as here marked and described, to be delivered in like good order and condition as addressed on the margin, (the unavoidable dangers of river and fire only excepted,) or to his
42 on their assignees, at the rate of 26 cents per bushel to Chicago. Freight and charges to be paid as noted below upon the actual and complete delivery of said goods and freight to said consignees or their assigns.

In witness whereof the owner or clerk of said boat hath affirmed to bills of lading all of this tenor and date, one of which being accomplished the other to stand void.

Marks.	Articles.	Weight.

1800 bushels No. 1 wheat in barge Rumsey, more or less, to M. S. Nichols & Co., via Chicago, N. W. R. Road.

EHLE.

Exhibit "D." referred to as annexed.

J. M. MILLER, *Com'r.*

Exhibit "E."

WINONA, MINN., *Oct.* 27, 1865.

Shipped in good order and condition by John Robson for account him on board the steamer Keokuk, whereof Sencerbox is master, the following articles as here marked and described, to be delivered in like good order and condition as addressed on the margin, (the unavoidable dangers of river and fire only excepted,) or to his or their assignees, at the rate of 26 cents per bus. to Mil. Freight and charges to be paid as noted below upon the actual and complete delivery of the said goods and freight to said consignees or their assigns.

In witness whereof the owner or clerk of said boat hath affirmed to 3 bills of lading all of this tenor and date, one which being accomplished the others to stand void.

Marks.	Articles.	Weight.

3500 bus. wh't in barge "Farley," to Angus Smith & Co., Milwaukee.

Exhibit "E." J. M. MILLER, *Com'r.*

District Court of the United States for the District of Wisconsin.

43 *Respondent's testimony.*

JOHN ROBSON
vs.
STEAMBOAT KEOKUK & BARGE FARLEY, La Crosse & Minnesota Steam P'k't Co., lb't. } In admiralty.

Deposition of witnesses taken by consent before me, J. M. Miller, clerk U. S. District Court and U. S. com'r, Wisconsin, at the city of La Crosse, Wisconsin, on this sixteenth day of May, A. D. 1866.

Present, John H. Van Dyke, esq., proctor for libelant and Messrs. Jno. W. Cary, and Wm. Hull, proctors for respondent.

Deposition of Philip Winell.

Philip Winell, witness for respondent, being duly sworn, deposed and said :

I reside at La Crosse, and occupation ship carpenter; been in that business for 25 years ; employ of La Crosse & Minn. Steam P'k't Co., in 1865, and since that time to May 1st, 1866.

I know the barge Farley ; known her for 3 years. Don't know where she was built. Her capacity was 4000 or 4500 bushels. Her condition, on the 23d of Oct. last, I don't recollect. I can't tell anything about particular dates. Overhauled her in 1863; planked her from the knuckles up, new deck frames and generally overhauled.

Quest. In what condition was she, after you repaired her?

(Objected to as immaterial and inadmissable.)

Ans. First rate condition. Her timber was sound and in good condition. Put all new timbers in her side ; she was tight, staunch, seaworthy, and as good as any new barge.

Quest. Was she of sufficient strength for the wheat trade?

(Objected to as leading and immaterial.)

(Question waived.)

Ques. State what her strength was her relative to her suf-
44 ficiency to engage in the wheat trade.

(Objected to as immaterial.)

Ans. Her strength as good as any new barge of her size.

Quest. What have you known or seen of the barge since you repaired her in 1863?

Ans. Never had anything to do with her since, except last summer she was brought for repairs, having 2 or 3 planks knocked into her—sometime last summer, in June or July—there were new timbers and plank put in her at that time, and she was caulked. Examined her condition then.

Quest. What was her condition, after repairs at that time, as to strength, tightness, and seaworthiness?

(Objected to as immaterial.)

Ans. She was just as good as she was 2 years before that time, except the ordinary wear and tear. She was seaworthy. Have seen since. Every day I see her. She is now in the shipyard. Went there two months ago. Her condition then was good. She is there to make a stage of her; not there for repairs. She don't leak a barrel of water in a week.

Cross-examined.

Quest. When was she there previously to this time.

Ans. She was there last summer. I do not know whether she was built for this river trade. We rebuilt her for this trade. Her top and sides are about 3 years old. The Farley herself was 8 or 9 years old, when we rebuilt her 3 years ago. I don't know why she is not used for carrying wheat now. We wanted her for staging and took her. I am at work in the same yard, and am in the employ of the La Crosse & Minnesota Steam Packet Company now called the North-Western Union Packet Company.

PH. WINELL.

45 Subscribed and sworn to before this 16th May, 1866.

J. M. MILLER,
U. S. Com'r Dist., Wis.

Deposition of Dan. Thayer.

Capt. Dan. Thayer, witness for respondent, being sworn, deposed and said:

I reside at North La Crosse, am a ship carpenter. Have been for 18 years; am in employ of La C. Minn. Steam Packet Co. for last 5 years, and am now in employ of North Western Union Packet Co., its successor. I know the barge Farley; known her for 4 years, owned by the La Crosse and Minn. Packet Company. I know she has been carrying wheat here for the last 4 years in bulk. She was rebuilt in 1863. New sides, top timbers and new deck put in her. Her old timbers were in good condition. Heaviest timbered barge in the line.

Quest. What condition was she in, when she left the yard in 1863? (Objected to as immaterial.)

Ans. Good condition. Has been once in the yard since in 1865, sometime in the summer. She had a plank broke in and a few timbers broken. Ran against the rocks I think. New timbers and planks put at that time, recaulked, and was in good condition. (Objected to as immaterial.) Have seen her since, to-day, she is in good condition.

Cross-examined.

Quest. What is the Farley now used for?

Ans. She is now used for a stage in the ship-yard.

Quest. What would you think of the condition of a barge to carry wheat in bulk, that would sink at her dock with her cargo in her?

Ans. I think she was in good condition.

Quest. If a barge should so sink with her cargo when not under way without meeting with any accident, would you consider her a seaworthy barge and fit to carry wheat in bulk?

46 Ans. I should think not.

Re-examined.

Quest. Might a barge that was perfectly seaworthy and fit for carrying wheat in bulk be so loaded or fastened to or injured at the dock that it would sink before commencing her voyage.

Ans. Yes, sir, it could.

Quest. State what might occasion such an accident.

Ans. Winds might cause it by driving one end on the bank, or getting ashore by the waves or swell of a boat in passing her. Bad loading, at one end too deep, might cause her to sink if the other end was on the bank. If she was loaded amidships, it would cause her to leak if the other end was on the bank. If she was loaded unevenly at one end or amidships, and one end on the bank, it would cause her to spring her buts and leak.

Cross-examined.

She might surge on the beach and spring aleak in that way. If she was run into hard enough it would cause her to sink. If the oakum was loose it would let the water in and sink her if there was enough water got into her. If badly loaded amidships it would spring her buts so as to take water, and trimmed up and sea-worthy condition as should be, it would become tight and in good condition. If she was loaded properly she will not spring her buts.

Quest. Suppose when a barge is moored at her dock with her cargo in her and without a watchman, does it increase her liability to sink?

Ans. I don't think it does.

Quest. Is she as safe without a watchman on board when ladened at the dock?

Ans. It depends upon the weather for that.

47 Quest. Supposing your barge Farley loaded with 5,000 bushels of wheat or thereabouts, moored at her dock in the evening with no watchman on board of her, next morning found her sunk, how would you account for it?

Ans. Account for it in two ways, bad loading for one thing and head winds might have same effect and by overloading.

Quest. Won't these barges stand heavy winds?

Ans. They will stand ordinary winds.

Quest. Same question, last as above but one, repeated, and add, if the barge was properly ladened?

Ans. Could not account for it.

Re-examined.

Quest. In the case last supposed would not a heavy wind, or the collision with another boat or anything of that cause, or the swell of a passing steamer, would not that cause a barge to sink?

Ans. Yes, sir.

Quest. Is the barge Farley permanently or temporarily withdrawn into the yard as a staging or float?

Ans. She is there only temporarily. We always keep some barge there for this purpose.

Cross-examined.

Quest. How do you know she is only there temporarily?

Ans. I took her there myself for that purpose.

Quest. How do you know that it is the intention to ever put that barge in commission again?

Ans. I know from the officers; have no other information.

D. A. THAYER.

Subscribed and sworn to before me May 16th, 1866.

J. M. MILLER,
Clerk & Com'r, Wis.

48 *Deposition of P. S. Davidson.*

P. S. Davidson, witness for respondent, being sworn, says:

Business is superintendant of the Northwestern Union P'k't Co. Place of business, La Crosse, Wisconsin. Have the general charge of shipyard at La Crosse. Am acquainted with building craft on Upper Miss'i. Have practical experience of the navigation of the Upper Miss'i for 10 years in capacity of captain and pilot most of the time. My acquaintance with the business of carrying wheat in bulk on barges, and have ever since been since the business commenced. I know the barge Farley, known her 4 or 5 years; she was rebuilt by our company; thoroughly overhauled in 1864; in good condition when she came out of the yard at that time; was in good condition in Oct., 1865 up to the time they sunk her at Winona. She was considered

sea-worthy. She was a good wheat barge and as strong as any barge of her style on the river.

Cross-examined.

Carrying on her last summer 32 to 3300 bushels. She had space to hold, I should judge, from 35 to 3600 bushels. Not customary to fill them full; no reason particularly. That was all we brought in her last summer at a time. She is not as large as the Pat. Brady. Her floor timbers are heavier than the Brady's. Plank not so thick. Otherwise she is of the same proportion. She is round knuckled. No advantage is round over square knuckles, in my opinion. She had keelsons; don't know exact dimensions of them. They are heavy for her size. Think they are 3x6 inches. Floor timbers 3x8; very heavy. Planking about 2 inches thick; knuckles are fastened by spikes and bolts.

Quest. After she sunk at Winona last fall did you see her when she was brought here?

Ans. I seen her when she was brought; do not think any repairs had been made before she was brought here. I did not see any injury to her hull any more than would naturally occur to a barge after being sunk. We used her for carrying wheat all the fall without repairing her. We did not use the pumps on her more than other barges. She is not a leaky barge now. There are some barges we use the pumps on more than others.

49

Quest. How does the Farley, Victor and Brady compare with the barges you have built for the last 2 or 3 years in size, strength and carrying capacity?

Ans. Have not built any of that size. Built larger ones; built all larger ones. They compare favorably in strength in proportion to their size with barges we have built. A small barge is not as strong as a large one. Largest sized barges carry 16,500 bushels. The barges we build average from 12 to 14,000 bushels. We have built from 5 to 10 new ones.

Re-examined.

Quest. How and by whom are the barges of the packet company loaded?

(Objected to as irrelevant.)

Ans. Sometimes they are loaded by the agent of the company, sometimes by the shippers, and sometimes by the boat's crew.

Quest. State whether it is customary for the company to furnish barges to wheat shippers at their request, and when so furnished who loads them, and at whose charge and risk is the barge and cargo from the time of so furnishing the barge until taken in tow by the company's boats.

(Objected to as incompetent, inadmissable and as an attempt to override, by the testimony solicited, a settled principle of law, and that it is leading.)

Ans. It is customary to furnish shippers with barges, and has been the custom for shippers to load them, and has been the custom up to this year that the shippers were responsible. It has been the custom. I don't know about the custom last year certainly. I think the custom was that the shipper is responsible until the barge was taken away.

Quest. When barges have been so left with or furnished to shippers, have they been left entirely in the charge of the shipper without any of the company's agents or officers in charge of them, or how otherwise?

(Objected to as leading, immaterial and improper.)

Ans. They are left in charge of shippers sometimes; sometimes men are left in charge of them.

Cross-examined.

Quest. You spoke of an order being issued by the officers of the company in reference to loading barges; if so, when was that order issued and was it in writing?

Ans. It was issued 2 years ago; do not know whether it was in writing or not.

Quest. What officers issued it, and how was it issued if not in writing?

(Objected to for the reason that no order was called for.)

Ans. I don't know anything about the issuing of it. I only know it was a custom we had in our company to hold the shippers responsible for the barges, until they were taken away.

Quest. What do you mean or understand by the words "custom of our company?"

Ans. I mean if they should leave a barge for a man to load, and he should sink the barge loading it, or sink while in his possession, that the company would not be responsible for it.

Quest. Was there any public advertisement made of this rule of the company, or how was it notified to the public?

Ans. Don't know of any public advertisement or any notification to the public.

Quest. What do you understand a custom to be?

Ans. An every day or weekly occurence; an every day business.

Quest. When was that rule adopted by your company?

Ans. It was a rule 2 or 3 years ago; I do not know when it was adopted; it was a rule when I was running a steamer 2 or 3 years ago.

Quest. State any and what losses occured in the hands of shippers when this rule was claimed to be in force by the company.

Ans. I don't know of any, unless this loss of the Farley comes under it or not.

Quest. Do you know whether the company claimed that this rule was in force or not last year?

Ans. I think the company would claim it this year or last if a barge

was lost in the entire charge of the shippers, or, in other words, the company would not consider itself responsible.

Quest. You say you so think. Do you so know? And if yea, what is your knowledge on the subject as to last year and the present year?

Ans. All I can answer is that the co. would not give any shipper a barge and be responsible for her while in his charge entirely.

Quest. How do you know they would not?

Ans. I, as superintendant of the company, would not furnish any man a barge to load under his own supervision, and be responsible for his loading the barge.

Quest. Did you, as superintendant, furnish all the barges that were furnished?

Ans. I did not all of them last year.

Quest. How do you leave them the present year?

Ans. As a general thing we leave the barge and a man in charge. It was somewhat the custom last year, but did not live up to it.

Re-examined.

Quest. Has there been any change by the company relative to their responsibilities except discontinuing the practice of leaving barges in the charge of shippers without a person in the employ of the co. to take charge of it and see to its loading?

(Objected to as immaterial and inadmissable)

Ans. I don't think there has been.

Quest. Did John Robson, of Winona, know that when the company left barges in his care for him to load, without any agent of the company in charge of them—upon what conditions were they left in this particular?

52 (Same objection as last above.)

Ans. I don't know anything about John Robson's knowledge. He has been a shipper for 4 or 5 years on the river.

P. S. DAVIDSON.

Subscribed and sworn to before me May 17th, 1866.

J. M. MILLER,
Clerk and U. S. Com'r, Wis.

Deposition of Sencerbox.

Charles Sencerbox, witness for respondent, being sworn, depose and said:

Reside at St. Paul, Minnesota; am capt. of a steamboat; been engaged in the navigation of the Upper Missi. and its tributaries for 12 years. Been engaged in steamboating for 15 or 16 years. Was capt. of S. B. Keokuk, in Oct., 1865. I know barge Farley; had her in tow about Oct. 23, 1865, towed her to Winona, Minnesota; left her there; the barge was there while I made two daily trips from La Cross to Winona; I left her made fast on shore just above the depot. Did not leave her in charge of anybody. Was not in the habit of leaving light barges in charge of anybody. I was there every day

and took charge of her myself; this was the regular place for landing barges. Was out of the way of steamboats. I was daily making trips from La Crosse to Winona and back; a round trip is from La Crosse to Winona and return. The distance is 40 miles so called, including crooks. Would get to Winona at 3 or 4 p. m. and would leave when we got loaded about six o'clock, and when we had finished our business.

Quest. What was the barge Farley taken to Winona for and left at the place stated?

Ans'r. Was taken there to be loaded with wheat whenever I had an opportunity to load her.

Quest. Did you load the barge Farley with wheat after taking there at that time?

Ans'r. No, sir.

Quest. Did any one under your direction or any officer, agent or employee of the La C. & Minn. P'kt Co. load that barge with wheat at Winona after you left her there?

53 (Objected to as immaterial.)

Ans'r. I can't say about the employees of the Packet Co., outside of the men on my boat, there was no officer of my boat gave any orders to load the barge, for I did not allow any of my officers to give out my barges, I mean by "my barges," the barges towed by the s' boat Keokuk.

Quest. Have you any knowledge that any officer or agent of the La Crosse & Minn. Steam P'k't Co. loaded or caused or directed the loading of said barge?

(Same objection as last above.)

Ans. No, sir.

Quest. In whose charge was the barge Farley and all barges towed by the Keokuk.

(Same objection.)

Ans. In my charge when on the trip. I mean by trip, all the time, until they were brought back here loaded with wheat, that is, they were subject to my orders. I never allowed them to be loaded unless under my orders.

Quest. In what condition as to tightness, strength and seaworthiness was that barge Farley at the time you left her at Winona?

Ans. Good condition. She did not leak and was a safe, sound barge for the number of bushels she carried. Had towed her for 4 or 5 years. She was suitable and was considered good barge for carrying wheat in bulk. Her capacity was about 3,000 bushels. She would carry more. I never loaded over 3,000. I loaded her from 2,500 to 3,000 bushels. Carrying wheat in bulk on barges has been in vogue for the last 5 years.

Quest. State whether or not peculiar skill and care are required in loading a barge with bulk wheat, and if so, what would the effect be on the barge of improperly or unskillfully loading her.

(Objected to as improper and inadmissable.)

Ans. Extra care is required. I can ruin a barge easily with bulk

wheat. By loading a barge too much amidships you will spring her
buts in the bottom. By loading her too heavy at the ends
54 and not enough amidships, will open the buts in her sides;
the effect would be that they would make water and sink if
they were not relieved.

Quest. After leaving the barge, as you stated, where did you next see her, and what, if anything, did you do with her?

Ans. Saw her sunk at the elevator loaded with wheat. I can't tell exactly when this was; two or three or four days after I left her there. I think it was in the evening that I saw her when sunk. I did not give any orders for her removal from the place where I had first left her. I know of her removal after she was sunk, not of my own knowledge, but heard so coming down the river. I do not know who removed her. I raised her after I saw her sunk. Brought her down here with a boat, the Keokuk, empty.

Qnest. Whose duty is it to receipt for wheat or other cargoes put on steamboats, or barges in their tow?

(Objected to as immaterial.)

Ans'r. The capt. or 1st clerk.

Quest. State whether any wheat was rec'd or receipted for by the capt. or clerk or by any other person authorized so to do, on board the Keokuk or the Farley after she was so left at Winona?

(Objected to as immaterial.)

Ans. No, sir.

Cross-examined.

Quest. In whose employ were you last season.

Ans'r. In the La Crosse & Mimm. St. P'kt Co. and now in the North Western Union Packet Company, its successor. Commenced running to Winona sometime in August last, or the 1st of September.

Quest. How far is the elevator at Winona from the s'boat landing?

Ans'r. About 1,000 feet, not over that from depot landing, where I usually lay. It is in plain view from the s'boat landing.

Quest. Did you see the barge at the elevator before she sunk?

Ans. No, sir.

Quest. If the barge Farley would carry on her more than
55 3,000 bushels, why did you carry on her only 2,500 to 3,000?

Ans'r. It loaded her deep enough to tow as deep as I wanted her. Some captains differ as to how deep a barge should be loaded. Don't know how old that barge is. We don't class barges here. If a barge is not seaworthy we cannot get a license to run them. I don't know that they were inspected this year. They are running on last year's license. If they have been classing them it is a new thing.

Quest. If you towed the Farley at the time stated to Winona for wheat, why did you tow her back to La Crosse empty?

Ans. She was loaded with wheat and sunk at Winona, and in raising her I tore her cargo box and decks so that I did not care to load

her until I brought her here to be repaired. I don't know that she has carried a bushel since. Don't think she has. She has not been required that I know of. There is considerable rush for carrying wheat now. The Farley is not a profitable boat to tow, she is too small and draws too much water. We have a large number of new barges that are lighter draft.

Quest. How many barges has the company?

Ans. Never counted. I think in the neighborhood of forty, could name them all.

Quest. How many of the whole number of the company's barges are now unemployed, what are their names and how many?

Ans. Not any that I know of except those repairing or waiting for repairs. The Farley is laying up at the ways, that is, the last time I saw her. She lies there for repairs. The Victor is up here at the head of the Nile, bottom side up. She has been bottom side up since she sunk in tow of the Keokuk. I think the Brady is at work somewhere.

Quest. Is she not now lying up at the ship-yard?

Ans. I don't know. We carry two clerks on boats the size of the Keokuk. One is a check clerk for checking freight.

Quest. What was the name of the 2d clerk of the Keokuk, on board on the 23d of October last.

56 Ans. Joseph Ehle. He was at Winona, the last time I saw him.

Quest. Have you not seen a bill of lading, or some paper showing the am't of wheat shipped on the Farley at Winona, on the occasion referred to, by whom shipped, where, and to whom consigned, or showing something in regard to the wheat. If yea, when and where did you see it, and what was it?

Ans. Did not see it. I heard there was such a bill found by the first clerk on the deck of the Keokuk on the way down after daylight in the morning, on this trip down, before referred to.

Quest. Have you any knowledge when the first clerk received that paper, or from whom he received it?

Ans. I have not, except what he told me. I don't know any more than what he told me about it.

Quest. What was done with the wheat that was taken out of the Farley when you raised her?

Ans. It was taken out by a man named Smith and another man, and they told me that they had bought it from the ins. co. I left the barge a day or so for them to get it out. The Transportation Company did not get the proceeds, or have any thing to do with it. The wheat was almost all wet except about 200 bushels. I was so informed by another man.

Re-examined.

Quest. Where was Joseph Ehle at the time, and during the time the barge was lying at Winona?

(Objected to as immaterial.)

Ans. On board the Keokuk.

Quest. At the time the 1st clerk informed you relative to the bill of lading spoken of, what did he say to you?

(Objected to as immaterial and inadmissable.)

Ans. He comes to me and says, I see you have not the Farley in tow. I says No, she is not loaded. He says somebody has put some bills on the desk here for her. Said I, do you know who did so. Said he, No. He said, I found them there when I got up this
57 morning. I remarked, it is very strange that a barge should be loaded there and we not know it, being not notified of it, or be loaded without orders. On my arrival here rec'd notice by telegram that she was sunk.

Cross-examined.

They received telegram at La Crosse, this was first notice I received. So Capt. Davidson told me at La Crosse.

CHS. E. SENCERBOX.

Subscribed and sworn to before me, May 18, 1866.

J. M. MILLER,
U. S. Comr. Wis.

Deposition of Rhodes.

Wm. Rhodes, witness for respondent, being sworn, deposed and said:

Was secretary of the La C. & Minne P'k't Co., & had charge of their office in La Crosse during the year 1865.

Quest. In years past has that company been in the habit of furnishing barges to shippers at their request, at different points on the river?

Ans. We have. We furnished barges to all points on the river as requested, and leave them if they are wanted; that occurs in dull times. In some cases we left men in charge of the barges, in others we have not, the party not knowing when they would be able to load the barges.

Quest. Where the barges were left with the shipper without any of your men in charge, under whose direction, or superintendance were such barges loaded?

Ans. Under superintendance of our agent. In charge of the agent or the shipper. Sometimes the shipper will not load his own barge; in such cases the agent takes charge of her and we pay 1-2 cent for loading, except at Winona elevator, where we pay for trimming only.

Quest. Who was your agent at Winona in Oct. '65?

Ans. F. A. Seevey.

Quest. Do you know the barge Farley being sunk at Winona late in Oct. '65?

Ans. I do. I don't know who took the barge to Winona.

58 Quest. Had you a general rule or regulation relative to

your business where barges were loaded by the shippers without any superintendence of your men or of your agent?

(Objected to as incompetent and irrelevant.)

Ans. We had such a rule. I think, but not sure, it was given to our agents and instructions to our captains to notify the agents. Think it was printed, but am not sure; can tell by examination.

Quest. In such cases what was the rule or regulation of your company?

(Objected to as incompetent and irrelevant.)

Ans. We instructed the captains to notify the shippers that this company would not be responsible for any loss or damage until it was taken in charge of by the steamboat.

Quest. How and when did you first learn that the barge Farley had been sunk at Winona?

(Same objection as above.)

Ans. By despatch from John Robson from Winona to me at La Crosse. Early in the morning of the day after the barge sunk. She sunk in the night and this was next morning. I had no knowledge of the barge being loaded.

(Same objection to last answer as to the question put.)

Quest. Did you, in January last, have a conversation with John Robson, relative to the sinking of said barge Farley, and if so, what was it?

Ans. I saw John Robson in Winona, and remarked to him, that he had sued us in his name. Then asked him how it was that he sued us in his name. He told me that he would not have done it, if we had signed his bill of lading. If we had signed his bill of lading he could have collected of the Insurance Company.

(Objection to the last foregoing answer as immaterial and inadmissable under the issue.)

Knew the Farley as one of our barges at that time. Her condition was as good as any other barge at the time she was taken to Winona. She was carrying wheat all the time. I went to Winona and found a man by the name of Lamberton and another man
59 whose name I don't know, taking wheat out of her. I asked him if he had got into a speculation.

Objection to any conversations with any third parties.)

He said that he had bo't the wheat of Mr. Ford, the agent of the Home Ins'e Company. After the wheat was taken out by these men, the barge was taken to La Crosse. I don't know where the Farley is now. She is some place around; don't keep run of barges.

Quest. Did the P'k't Co. ever take charge of that barge after it was loaded, or of the wheat after it was sunk, or ever rec'd or had anything to do with the proceeds of that wheat.

(Objected to as irrelevant and incompetent.)

Ans. Dan Thayer and two other men went to Winona with me. I saw them assisting these men in unloading the wheat. The Packet Co. has not, to my knowledge, received any of the proceeds from the wheat.

Quest. Was it all taken out and kept at Winona?

(Same objection as last.)

Ans. I think so.

Quest. After a barge is ladened with bulk wheat to its full capacity, is it safe or prudent, or according to the general usage of handling wheat in bulk, to leave the same moored at the dock or landing without any person to watch and look after it over night.

Ans. I don't think it prudent or safe, particularly at the Winona elevator when other boats are landing to take barges. We take the barges as soon as the captains are notified that they are ready. It is not usual or customary to leave them at the dock without a watchman.

Cross-examined.

Quest. Are you a practical ship carpenter or navigator?

Ans. Neither. I know nothing further about the Farley than that she was used in carrying wheat.

Quest. Were the barges of the company classified last year?

Ans. No sir. Have not been classified before this year; I believe they have been classified this year. I received a printed circular
60 from the underwriters notifying me that they were classified, and have seen Charles L. Rider inspecting them and was informed that was his business. To the best of my recollection the Farley was classified as No. 2. I know she was not classified No 1; can tell upon reference. If barges are classified No. 1, they are insured at lowest rates. If No. 2, at higher, and at No. 3 still higher, and if scratched out won't insure in them at all.

Quest. Will they insure wheat in bulk at all in No. 3 barges?

Ansr. Can't tell whether they will or not; can't tell whether they will insure wheat in bulk or not in No. 2 barges.

WM. RHODES.

Subscribed and sworn to before me May 18th, 1866.

J. M. MILLER,
U. S. Com'r, Wisconsin.

Deposition of A. Bryant.

Alden Bryant, witness for respondent, being sworn, deposed and said:

My age is 41 years; residence Winona, Minnesota; occupation s'boat clerk. In fall of 1865 was in employ of La Crosse & Minne. Pk't Co. as first clerk on the Keokuk, also on the Favorite on the line between La Crosse and Winona. The line was running during the season of 1865, and she, the Favorite, remained on that line until about September, when the Keokuk took her place until the close of navigation. I was 1st clerk of each boat while running on this line. Am acquainted with barge Farley for about 3 years, as near as I can remember. Her condition in fall of 1865 we considered good;

used her all the time and considered her a strong barge, though she was small; strong for her capacity. She was carrying bulk wheat for the 3 years last past; was in use all the time excepting in low water. She was generally in use. We loaded her from 2,800 to 3,000 bushels; don't think she was loaded over 3,100 bushels during the season of navigation of 1865, at any time she was loaded by the company.

Quest. Were there any orders relative to the amount of bulk
61 wheat to be loaded on her; if so, what was the am't and by whom given?

(Objected to as immaterial and inadmissable.)

Ansr. Our orders were to load her from 2,800 to 3,000 bushels; orders given by Capt. Newton. He was capt. of the Favorite nearly all the time she was on this route. The change of captains was shortly before the Favorite left the line. I heard of the sinking of the Farley at Winona in the fall of 1865. Heard of it at La Crosse depot first on my arrival in the boat, about 8 or 9 o'clock in the morning after she sunk.

Quest. From whom did you receive that information?

(Objected to as immaterial and inadmissable.)

Ansr. I think Capt. Rhodes and P. S. Davidson came down to the boat and inquired about it, and we knew nothing about it.

Quest. How did they get that information?

(Same objection as last above.)

Ansr. They stated they received it by telegram.

(The answer of the witness objected to as as not being evidence.)

The daily route of these vessels was from La Crosse to Winona and return in 24 hours. Usual time of leaving La Crosse was from 4 to 8 o'ciock a. m., arriving at Winona from 12 to 1 o'clock same day, was the average time; sometimes sooner or later. We usually left Winona upon the arrival of the train; part of the time about 7 or 8 o'clock; late in the fall the train arrived later, and we left at about 11 o'clock p. m.

Quest. On the trip which you completed on the morning upon which you received the information here at La Crosse, that the Farley had sunk at Winona, did you have said barge in tow of the Keokuk or have anything to do with her during that trip.

(Objected to as immaterial.)

Ans. No, sir; I did not see her during that trip.

Quest. State whether you ever received any notice that the Farley had been loaded with wheat, and if so, when and how was it received?

(Objected to as immaterial.)

Ansr. I received no notice of the loading of the Farley at Winona, or any thing in regard to her.

62 Quest. Who had charge on that line of receiving and receipting of loaded barges during the year 1865?

Objected to as immaterial.)

Ansr. Mr. Seevey, agent of the line at Winona, he receipted for the barges, usually for the shippers, except John Robson, and the

1st clerk of the boat receipted to him. In case of the absence of the 1st clerk the 2d clerk acted for him.

Quest. In what way were the barges received from and receipted to John Robson?

(Objected to as immaterial.)

Ans. John Robson did his own shipping with us and always took his own receipts. He usually came on board before the boat left and got his receipts. Got his book signed and got his bills for loading, ½ cent per bushel paid. Took his receipts in his bill of lading book.

Quest. State whether there was any case, to your knowledge, in 1866, in which he failed to present his bill of charges for loading and trimming at the time of delivery of the loaded barge to the boat.

(Objected to as immaterial.)

Ansr. I have no recollection of but one instance on which he failed to get his book signed, during the season of navigation. I am not positive, but am pretty certain there was one when a loaded barge left without getting his bill book signed.

Quest. In whose charge are the barges towed by the several boats of the packet company, and who assigns them to shippers for loading?

(Objected to as immaterial and not evidence.)

Ansr. Usually left in charge of the agents of the line, unless specially authorized otherwise by the captain.

Quest. Did either Capt. Newton or Capt. Sencerbox, during the year 1865, authorize John Robson or any other person, at his own pleasure or discretion, to take the barges of the company, wherever he could find them, and load them?

(Objected to as immaterial and not by any possibility within the knowledge of the witness.)

63 Ans. Never heard either of them give any such orders.

Quest. State what their practice was?

(Objected to as immaterial and inadmissable.)

Ans. The practice with regard to distributing the barges to be loaded, by both Captains Newton and Sencerbox, was to distribute them amongst our shippers equally as possible from day to day, unless specially authorized differently by the superintendent of the company.

Quest. You have stated "that John Robson did his own shipping with us;" in what respect did his mode of doing business differ from other shippers?

(Objected to as immaterial.)

Ans. John Robson took his bills of lading receipts direct from the clerks of the boats, the custom of the other shippers was to make their reports of amounts shipped, with the names of the barges upon which it was shipped to the agent of the line at Winona.

Quest. You state that you think there was one instance in which John Robson's bill book was not signed for a barge before a boat left. When was it, and what were the circumstances?

(Objected to as immaterial.)

Ans. I do not recollect the time or the circumstances, but have the impression on my mind that the thing occurred.

Quest. On the last trip, prior to your hearing at La Crosse that the barge was sunk, at what time did you arrive at Winona, and what time did you leave there?

Ans. I think we arrived there early in the evening, about dark, and left there between 12 and 3 o'clock. It was a very stormy night. It had been very windy during the day, and blowing hard on shore the fore part of the night at Winona, snowing the fore part of the night. Snow fell from 2 to 3 inches (did not measure it) during the night; dampish snow.

Quest. Were you away from the boat during your stay there at Winona that night, and if so, at what place, and how long were you absent?

64 Ans. My recollection was that I was back and from the agent's office several times, (Mr. Seevey's office;) did not think I was absent over half hour at any one time. This was distant from the levee about 200 ft. The Farley was sunk in front of the elevator; I saw her there the next day after she was sunk. I think the Northern Light was there at the elevator that night. She ran in three for barges; she was there as I recollect for 3-4 of an hour.

Cross-examined.

Quest. On what route was the Farley employed in the month of Oct., 1865?

Ans. Most of that month she was employed between La Crosse and Winona carrying bulk wheat; she was in tow of s'boat Keokuk while she was employed there.

Quest. What steamer towed her up to Winona?

Ans. I don't recollect. The Farley would hold, perhaps, 3,500 bushels, perhaps more; know her for about 3 years; we loaded her from 2,800 to 3,100 bushels, to the best of my recollection, in 1865. Before then I think she has been loaded to 3,400 to 3,5000 bushels. I don't remember that the Farley ever sank before the fall of 1865.

Quest. You state that the Farley is considered a strong barge—arr you a shipbuilder?

Ans. No, sir; I never aided in the construction of a barge.

Quest. You state that the s'boat Northern Light was at the elevator after barges that night the Farley sank; to what line did she belong?

Ans. She belonged to the Northwestern Packet Co.; I think it was she. John Robson was a very large shipper of wheat from Winona during the season of 1865, but do not know to what extent. I don't think he did all his shipping by our line, but in the fall he did nearly all with our line. I don't know from what other points he shipped wheat to my own knowledge, only from hearsay; think he shipped some from Fountain City. W. F. Davidson was pres't of

the La Crosse & Minn. Steam P'k't Co. during the season of
65 1865. He resides at St. Paul.

A. BRYANT.

Subscribed and sworn to before me May 22d, 1866.

J. M. MILLER,
U. S. Com'r, Wisconsin.

Hearing.

SEPTEMBER 3, 1866.

This day came the parties by their advocates, and this cause came on to be heard upon the pleadings and proof, and not being concluded the further hearing was adjourned until to-morrow morning.

SEPTEMBER 4, 1866.

This day came the parties by their advocates, and the hearing of this cause was resumed, and not being concluded it was adjourned until to-morrow morning.

SEPTEMBER 5, 1866.

This day came the parties by their advocates, and the hearing of this cause was resumed, and not being concluded it was adjourned until Saturday morning next.

Hearing concluded, &c.

SEPTEMBER 8, 1866.

This day came the parties by their advocates, and the hearing of this cause was concluded, and the court not being sufficiently advised, held the same under consideration.

Decree.

And now, at this same term, to wit, September term, 1866, and on the twelfth day thereof, to wit, on the first day of October, A. D. 1866, the following proceedings were had, to wit:

JOHN ROBSON *vs.* THE STEAMBOAT KEOKUK AND BARGE FARLEY, the La Crosse & Minnesota Steam Packet Company, claimant.	In admiralty.

This day came the parties by their advocates, and on consideration of the pleadings and proofs, and the arguments thereon, it is ordered
by the court that the steamboat Keokuk, her boiler, engine,
66 machinery, boats, tackle, apparel, and furniture, and barge Farley are liable in maritime lien, as propounded in the libel, to the amount of three thousand nine hundred and seventy-two dollars and thirty cents.

Whereupon it is ordered, adjudged and decreed by the court, that the libellant do have and recover of the La Crosse and Minnesota Steam Packet Company, the claimant, and William F. Davidson, its stipulator, the said sum of three thousand nine hundred and seventy-two dollars and thirty cents, with costs to be taxed: and in default of the payment of this decree and the costs within ten days, that an execution be issued against them for the same.

A. G. MILLER.

Appeal.

And this day (October 1, 1866,) came the respondents in open court and prayed an appeal to the United States Circuit Court for the district of Wisconsin. Whereupon it is ordered by the court, that the said appeal be and is hereby allowed, and that said respondents enter into a bond, with sureties to be approved by the judge, in the penalty of eight thousand dollars, for a supersedeas, within ten days.

Appeal bond.

OCTOBER 9, 1866.

This day came the La Crosse and Minnesota Steam Packet Company and filed its bond, in the penalty of eight thousand dollars, with Peyton S. Davidson as surety, as follows:

Know all men by these presents, that we, the La Crosse and Minnesota Steam Packet Company, as principal, and Peyton S. Davidson, are held and firmly bound unto John Robson in the sum of eight thousand dollars, lawful money of the United States of America, to be paid to said John Robson, his executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals this 6th day of October, A. D. 1866.

67 Whereas the above-bounden La Crosse and Minnesota Steam Packet Company and William F. Davidson have appealed to the Circuit Court of the United States for the district of Wisconsin from a decree of the District Court of the United States for said district, bearing date October 1st, A. D. 1866, in a cause in which the said John Robson was libelant, and the said La Crosse and Minnesota Steam Packet Company was claimant, of the steamboat Keokuk and barge Farley, and respondent:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal with effect, and pay all such costs, damages, charges and expenses as shall be awarded and decreed against them as such appellants, and answer any decree that may be made therein, then this obligation to be null and void; otherwise of force.

The La Crosse and Minnesota Steam Packet Company, by—

[SEAL.] P. S. DAVIDSON, *Sup't.*

[SEAL.] P. S. DAVIDSON.

Signed, sealed and delivered in presence of—

CYRUS K. LORD.

DISTRICT OF WISCONSIN, *ss*:

P. S. Davidson, being duly sworn, depose and say that they are severally worth the sum of eight thousand dollars over and above all debts, liabilities, and exemptions allowed by statute.

P. S. DAVIDSON.

Subscribed and sworn to before me this 8th day of October, 1866.

CYRUS K. LORD,
Court Commissioner U. S. Circuit Court Dist. Wisconsin.

OCTOBER 9, 1866.

This bond is approved.

A. G. MILLER, *Judge.*

Dist. clerk's certificate.

UNITED STATES OF AMERICA, *District of Wisconsin, ss*:

John M. Miller, clerk of the District Court of the United States of America for the district of Wisconsin, do hereby certify that
68 I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the case of John Robson vs. The Steamboat Keokuk and barge Farley.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the said United States the ninety-first.

[SEAL.] J. M. MILLER, *Clerk.*

[5-cent stamp, cancelled.]

(End of record from District Court.)

The following testimony was taken in the Circuit Court on behalf of the respondent:

United States Circuit Court for the District of Wisconsin.

JOHN ROBSON, libellant and appellee,
vs.
THE STEAMBOAT KEOKUK AND BARGE FARLEY, claimant, respondent and appellants. } In admiralty.

Testimony of witnesses, taken on this 21st day of September, 1867, before me, William Hull, a notary public for Wisconsin, to be offered on the hearing, subject to any objections as to the admissability at the hearing, and subject also to any objection thereto, except as to the mode of taking the same. Present, Wm. Hull, on the part of

respondent, and John H. Van Dyke, on part of libellants. Said testimony being taken on behalf of said respondent.

Deposition of Jas. R. Hatcher.

James R. Hatcher, being duly sworn, on his oath says: I know the barge Farley; have known her for two or three years; have towed her about three times a week for all of one fall; she was
69 a very good little barge; I would consider her seaworthy; I don't believe I ever had over thirty-one hundred bushels of bulk wheat on her; she was a small barge, and I did not want to load her deep; I did not want to work the engines of the Keokuk slow in towing her; thirty-five hundred bushels of wheat would put her pretty deep—that is, I mean there would not be much of her sides out of water, not over eight inches I believe; thirty-one hundred would put her probably two inches more out of water. Where the steamers leave barges along the shore the shippers generally load them; I know this to be the custom of the river; I am speaking now of 1865; the custom has changed now, because the wheat shippers are fewer now than then; the shipper had charge of the barge until she was taken in tow of the steamboat; I mean, my experience is that the shipper was in charge in loading her and until the steamboat relieved him of the charge; I use the word custom—I mean the manner of doing business, or the habit of doing business, at that time—the year 1865. In the spring of 1861 we had but one barge for carrying bulk wheat, and it was so divided off as to use but part of its carrying capacity; it was fixed with binns, so that different shippers could have their separate binn, as they were few shippers and little wheat, and no large buyers. John Robson, of Winona, and C. F. Conrad, of Milwaukee, were then the principal buyers. The Farley, in 1864, was not constructed with binns.

J. R. HATCHER.

Subscribed and sworn to before me this 21st Sept., 1867.
WILLIAM HULL,
Not. Pub., Wis.

And now, at this same term, to wit, September term, A. D. 1867, and on the fifteenth day thereof, to wit, on the 25th day of September, A. D. 1867, the following proceedings were had, to wit:

70 *Hearing in Circuit Ct.*

JOHN ROBSON *vs.* THE STEAMBOAT KEOKUK AND BARGE FARLEY, the La Crosse and Minnesota Steam Packet Company, claimant.	Appeal in admiralty.

This day came the parties by their counsel, Messrs. Emmons & Van Dyke appearing for the libellant, and Messrs. Arrington and John

W. Cary for the respondents, and this cause came on to be heard before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, and the hearing being concluded the same was held under advisement.

And afterwards, to wit, on the 21st day of the said term, to wit, on the 25th day of November, A. D. 1867, the following proceedings were had, to wit:

Decree of affirmance.

JOHN ROBSON
vs.
THE STEAMBOAT KEOKUK AND BARGE FARLEY, the La Crosse and Minnesota Steam Packet Company, claimant. } In admiralty appeal.

The court having considered, and being now fully advised upon the matters heretofore submitted, herein affirms the decree of the District Court; and it appearing from the record that a decree was rendered in the District Court, on the first day of October, in the year of our Lord one thousand eight hundred and sixty-six, in favor of the libellant, for the sum of three thousand nine hundred and seventy-two dollars and thirty cents damages, together with costs, it is thereupon ordered, adjudged and decreed by the court, that the respondents pay to the libellant in this action the said sum
71 of three thousand nine hundred and seventy two dollars and thirty cents, the amount of the decree aforesaid, together with three hundred and twenty dollars and fifty-five cents, the interest on said decree from the said first day of October, in the year of our Lord one thousand eight hundred and sixty-six, amounting in all to the sum of four thousand two hundred and ninety-two dollars and eighty-five cents, together with the costs herein, and also the costs decreed in the District Court, within ten days from this date; and that in default thereof the said libellant may have his execution therefor against the said claimant, the La Crosse and Minnesota Steam Packet Company, and also against William F. Davidson, the stipulator of the said claimant.

D. DAVIS.

And afterwards, to wit, on the 22nd day of said term, to wit, on second day of December, A. D. 1867, the following proceedings were had, to wit:

Appeal.

JOHN ROBSON
vs.
THE STEAMBOAT KEOKUK AND BARGE FARLEY, the La Crosse and Minnesota Steam Packet Company, claimant. } Appeal in admiralty.

This day came the La Crosse and Minnesota Steam Packet Company, claimant, and William F. Davidson, stipulator, by their counsel

Mr. Cary, and prayed an appeal to the Supreme Court of the United States, with an order for supersedeas, to wit:

Circuit Court of the United States for the district of Wisconsin.

JOHN ROBSON, libellant,
v.
THE STEAMBOAT KEOKUK AND BARGE FARLEY, the La Crosse and Minnesota Steam Packet Company, claimant and respondent, and William F. Davidson, stipulator of the said claimant.

72 The above-named respondent and stipulators, conceiving themselves aggrieved by the final sentence or decree entered on the 25th day of November, A. D. 1867, in the above-entitled cause, do hereby appeal therefrom to the Supreme Court of the United States; and they pray that this appeal may be allowed, and that a transcript of the record, proceedings and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

JOHN W. CARY,
Proctor for Respondent and Stipulator.

Appeal allowed.

Whereupon it is ordered by the court that an appeal be and is allowed, and that a bond for supersedeas, to be approved by the court or a judge thereof, be given, with sureties, in the penalty of ten thousand dollars.

DECEMBER 4, 1867.

Bond for supersedeas filed as follows:

Circuit Court of the United States for the district of Wisconsin.

Appeal bond.

STEAMBOAT KEOKUK AND BARGE FARLEY, La Crosse and Minnesota Steam Packet Company, claimant, and William F. Davidson, stipulator of said claimant, appellants,
vs.
JOHN ROBSON, libellant and appellee.
In admiralty.

Know all men by these presents, that we, William F. Davidson, of St. Paul, Minnesota, and S. S. Merrill, of Milwaukee, Wisconsin, are held and firmly bound unto the above-named John Robson in the sum of ten thousand dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our

seals, and dated the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

73 Whereas, the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the Circuit Court of the United States for the district of Wisconsin;

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] WM. F. DAVIDSON.
[SEAL.] S. S. MERRILL.

Sealed and delivered, and taken and acknowledged, this 4th day of December, A. D. 1867, before me.

EDWARD KURTZ, *Clerk.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

William F. Davidson and S. S. Merrill, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

WM. F. DAVIDSON.
S. S. MERRILL.

Sworn to before me this 4th day of December, A. D. 1867.

EDWARD KURTZ, *Clerk.*

Endorsed: Dec. 4, 1867. This bond approved as a supersedeas. A. G. Miller, district judge. Filed December 4, 1867, and citation issued.

74 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Edward Kurtz, clerk of the Circuit Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of John Robson vs. Steamboat Keokuk and barge Farley.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district of Wisconsin, this twentieth day of January, in the year of our Lord one thousand eight hundred and sixty-eight and of the independence of the said United States the ninety-second.

[SEAL.] EDWARD KURTZ, *Clerk.*

75 United States of America to John Robson, greeting:

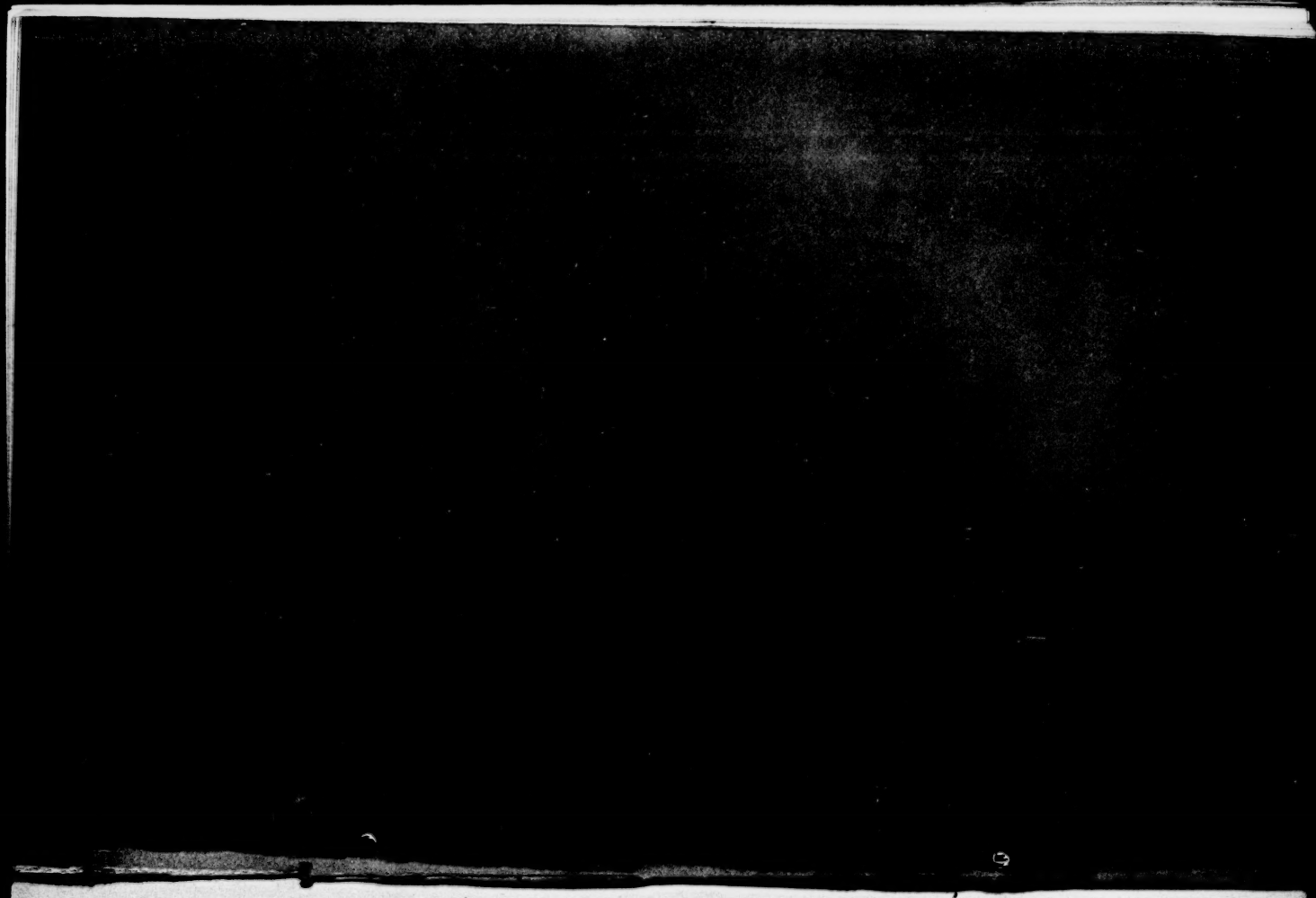
You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to an appeal in the Circuit Court of the United States for the United States of America for the district of Wisconsin, wherein the steamboat Keokuk and barge Farley, The La Crosse and Minnesota Steam Packet Company, claimant and respondent, and William F. Davidson, stipulator of said claimant, are appellants, and you are appellee, to show cause, if any there be, why the decree passed against the said The La Crosse and Minnesota Steam Packet Company and William F. Davidson should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, chief justice of the said Supreme Court of the United States this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

[SEAL.] A. G. MILLER, *District Judge.*

We hereby admit service of the foregoing citation.
December 12th, 1867.

EMMONS & VAN DYKE,
Libellants' Proctors.



SUPREME COURT

OF THE

UNITED STATES.

DECEMBER TERM, 1869.

No. 141.

THE STEAMBOAT KEOKUK AND BARGE FARLY, The La Crosse & Minnesota Steam Packet Company, Claimant and Respondent, H. Williams, F. Davidson, Stipulators of said Claimant, *Appellants*,

against

JOHN ROBSON.

BRIEF AND POINTS.

JOHN W. CARY, *Counsel for Appellants.*

Starrs' Print, Milwaukee.

SUPREME COURT

OF THE

UNITED STATES.

NO. 140. DECEMBER TERM, 1869.

THE STEAMBOAT KEOKUK AND BARGE FARLY and others, *Appellants*,

vs.

JOHN ROBSON, *Appelle*.

The La Crosse and Minnesota Steam Packet Company were, during the year 1865, the owner of the steam boat Keokuk and several barges, which were running on the Mississippi River between La Crosse and Winona, and engaged in carrying passengers and freight. On the 23d day of October, 1865, the steamer Keokuk towed the barge Farley to Winona, and left her moored at the dock at that place, where she was left in charge of no one. John Robson, a shipper at Winona, on the 27th day of October, 1835, at about 5 o'clock in the afternoon, took possession of said barge, and took her to the Elevator near by, and with his own men, loaded into her about 3,500 bushels of wheat in bulk, to be shipped to La Crosse. He did not ask permission of the master of the Keokuk to load said barge, or inform him, or any other person of his intent to load her. He had previously, at times, taken possession of barges and loaded them, and they were afterwards towed by the Packet Company to La Crosse ; had done this by permission of Captain Newton and officers of Packet Company, but never had done it, or had permission to do it, from Captain Lemerhox, who was then in command of the Keokuk.

The steamer did not arrive at Winona that night until after dark, and it was a very stormy night and snowing hard. He landed at the lower landing, about fifty rods from the Elevator, where the barge

then was, and after unloading the local freight, moved his boat up to the railroad dock, about 1000 feet from the Elevator, and put off the rest of his cargo, and about twelve o'clock at night started back to La Crosse. While the boat was laying at the lower landing, the book-keeper of John Robson came to the 2d Clerk, who was checking off freight, and handed to him two papers, saying here is some bills, which the clerk put in his overcoat pocket, and nothing farther was said between them ; there was no explanation what bills, and nothing farther took place between them. No book was presented to him to sign, and no receipts asked, and the clerk subsequently laid said bills on the 1st Clerk's desk. No other notice was given to the boat, or any its officers, that the barge had been loaded, and none of the officers were aware of the loading of the barge until they were over one-third of the way to La Crosse. The papers delivered were memorandum bills of lading of the barge and were discovered by the 1st clerk, and shown the Captain when about one third of the way to La Crosse. The barge was not taken care of or watched by Robson, and in the morning it was found sunk at the dock where he had left it. The libel charges that the barge was unseaworthy, and that the cargo was lost by carelessness of the master and officers of the steamers. There was no proof to sustain the charge of unseaworthiness. The barge was taken to Winona to be loaded whenever a cargo could be obtained, but there was no arrangement that Robson was to load her, and the master and officers of the boat had no knowledge or information that Robson was to, or had loaded her on that day himself. Thayer & Davidson, ship-carpenters, swear that the barge was seaworthy, and the proof further shows that the barge would hold about 3,500, but she had not been loaded during that season over 3000 bushels. It was proved that it was the usual custom of Robson, when shipping wheat, to have his bill of lading signed in his shipping book by the clerk of the boat.

The decree was for the Libellant, and was affirmed in the Circuit Court.

The decree should be reversed.

I.

Robson is estopped to claim that the barge was unseaworthy. He of his own volition, and without previous arrangement, took this barge while lying at the dock, and put his wheat on board of it. It was no act of claimants, and he cannot now allege that it was unfit for the purpose. He is the only witness that attempts to prove the barge was unseaworthy, and shows that he was fully advised and posted in regard to its condition. There was no such defect, according to his own testimony, and he cannot be allowed to say now that it was unseaworthy ; otherwise he might purposely put his property on board of an unseaworthy craft, and then charge claimants with its loss.

But his allegations as to its seaworthiness are wholly disproved. Record pp. 28 to 34.

II.

Robson overloaded the barge. The orders of the claimant were to load her with only from 2,800 to 3,000, and she had only been loaded to that extent during the whole season. Robson in this case loaded her with 3,500. In so doing he was acting at his peril, and cannot charge the claimants with consequences of his own wrongful acts. Record 35.

Robson took the barge in the absence of the agents of the Packet Company and loaded her as he chose, and it is manifest she was overloaded, which is the probable cause of the loss.

III.

After Robson took the barge, she was in his exclusive possession, and he was bound to keep some one in charge of her until the master of the Keokuk took actual possession. He testifies that it was necessary to keep a man on board, and that he did so, in all previous cases, and that he sent his bill therefor to the master and

received his pay for such service on such occasions. And all the parties agree that it was not safe or prudent, at any time, to leave a loaded barge alone in the river, particularly at that place and especially was this the case on such a night as is here described Robson having taken possession of and loaded the barge, it was his duty to take care of it until actually relieved by the master of the Keokuk taking possession. He was guilty of negligence in leaving the barge alone, and the loss occurred in consequence thereof. It was about seven o'clock when the paper or memorandum bills were givn to the clerk, long after dark, when the master would not be able to discover by observation that the barge had been loaded.

IV.

There was no sufficient or proper delivery ot said barge, loaded, to said steamer Keokuk.

1st.—No officer of said steamer had any notice or intentation that said barge had been loaded until the steamer had gone nearly half way to LaCrosse.

2d.—The uniform course of business was to have said bills signed or receipted when delivered to the boat, and the only exception specified was a certain occasion when Robson's book was locked up and he could not get at it to have it signed.

3d.—The captain could exercise his discretion, whether or not to receive that barge at that time. It had been loaded by Robson without his knowledge or consent, and he was under no obligation to take it in tow on that trip, and if tendered to him, could rightfully refuse to accept it, and in that case it would remain in the custody and at the risk of Robson.

4th.—This pretended bill of laiding somewhat surreptitiously smuggled on board the boat without any one's knowledge, should not be allowed to alter this responsibility.

The captain was entitled to actual notice that he might decide to receive or reject it, and until actually relieved the custody of the barge was with Robson.

5th—The captain could not have returned to Winona for the barge at the time the pretended bill of lading was brought to his notice; such an act would have been a violation of his plain duty, and a change in the voyage that would have forfeited his insurance and rendered the boat liable for all accidents or injuries that might have occurred. The District Judge was clearly in error in holding that he could.

V.

There never was a shipment of this cargo under any contract of affreightment so as to bind the Keokuk or subject it to this lien.

Had the steamer had the barge in tow and the crew of the steamer received on board such cargo, clearly this lien would have attached; but in this case the shipper made the barge his own for the time being and put his property aboard of it at his own risk, and if by any accident it had been destroyed before the steamer arrived at Winona, the steamer could not have been liable for it.

The wheat and barge were in the exclusive control of the shipper and the actual control thereof never passed to the steamer until after the barge sunk. The steamer, therefore was never subject to a maritime lien, whatever might have been the liability of the Packet Company.

The case of Bulkley vs. Namukeag Cotton Co., 24 How. 386, is not applicable to the facts of this case.

There the goods were delivered to a lighter in the control of the ship; here the shipper took control of the barge himself and did not deliver either barge or cargo to the steamer. Supposing in the case in the Supreme Court instead of delivering the cargo to the lighters, the shipper had taken possession of the lighters and himself loaded the cargo on board and then undertaking to have taken it to the ship. Would the ship have been liable? Certainly not, for there never would have been a delivery to the ship.

VI.

The facts as proven, really prove that the second clerk was not authorized to receive or receipt for barges; that it was a branch of business looked after and attended to by the master himself, and the receipts given by him or by the first clerk.

A great effort was made to show that the second clerk had receipted in certain cases, but it afterwards turned out that those receipts were given while the second clerk was acting as first clerk, during the sickness of the first clerk.

But no one receipted for that barge, and no one knew that any such bill of lading had been delivered.

There is nothing in the proofs to justify the remarks of the District Judge that the captain or first clerk were in any manner neglectful of their duties. They state that they had no knowledge of these papers until far on their way to Winona.

The suit is a speculative affair between the libellant and Insurance Company. The libellants claim for the loss having been rejected by the Insurance Company on the ground that there was never any shipment or delivery of the wheat and the decree should be reversed.

JOHN W CARY,
Counsel for Appellant.

Supreme Court of the United States.

THE STEAMBOAT KEOKUK AND BARGE FARLY, THE LA CROSSE & MINNESOTA STEAM PACKET COMPANY, Claimant and Respondent, and WILLIAM F. DAVIDSON, STIPULATOR OF SAID CLAIMANT, Appellants,

vs.

JOHN ROBSON, Appellee.

BRIEF FOR APPELLEE.

N. J. EMMONS,
Counsel for Appellee.

Supreme Court of the United States.

THE STEAMBOAT KEOKUK AND BARGE FARLY, THE LA CROSSE & MINNESOTA STEAM PACKET COMPANY, Claimant and Respondent, and WILLIAM F. DAVIDSON, STIPULATOR OF SAID CLAIMANT, Appellants,

vs.

JOHN ROBSON, Appellee.

BRIEF FOR APPELLEE.

If the wheat in question was delivered to the Packet Company respondent, for transportation, there can be no doubt of its legal liability. No attempt is made to account for the accident occasioning the loss.

The question of delivery would ordinarily be one of fact purely: perhaps in the present case, mixed with one of law, whether the actual signing of a receipt or bill of lading was necessary in order to bind the carrier and his vessel. Of course under the authorities, it was not.

Evidence was given of the course of business between these parties. Robson loaded his own wheat, and received for his

labor and expense a half cent per bushel. Their contracts became complete upon notice to the officers of the boat of the shipment. In the present instance, notice in the usual way was given personally to the second clerk, who, from the evidence, appears to have acted as frequently in the acknowledgment of shipments and signing of bills, as either the first clerk or master. Both Courts below have agreed upon the law and facts, and we submit, the decree should be affirmed.

The District Court pronounced the following opinion, which fully narrates all the facts:

MILLER, Judge.

"It appears that the Steam Packet Company, as a common carrier on the Mississippi river, carried wheat in bulk on barges towed by their steamboats. This manner of transportation is pursued for convenience to shippers and carriers, and also on account of low stages of water. The steamboat Keokuk was making daily trips between Winona, in the State of Minnesota, and La Crosse. The barge Farly was brought by the boat to the wharf at Winona, and left there to be loaded with wheat for transportation. Sometimes men of the boat assisted in the loading and trimming of the barges; and when the shipper did that service he was paid by the carrier at the rate of about half a cent a bushel. The barge had been at Winona two or three days, while the boat made two trips to La Crosse and back. Libellant, who was a large shipper of wheat in bulk, loaded her on the 27th day of October, 1865, with three thousand five hundred bushels of wheat, to be towed to La Crosse by this boat. The boat arrived at Winona after her usual time, about six o'clock in the evening. Night came on before she was through discharging and receiving freight; and a heavy snow storm ensued, which continued until after the boat left for La Crosse. It was intended by the shipper, that the barge with the cargo of wheat should be towed by the steamboat to La Crosse on that trip, and probably it was so contemplated by the captain on his arriving at Winona. It

was usual for the captain to look after barges he had left to be loaded, and to take them in tow when loaded. The captain did not go ashore to look after this barge, but left without her, about twelve o'clock in the night. The barge sunk at the wharf about three o'clock in the night, and the wheat was wetted and damaged.

Bills of lading of wheat shipped on barges were rarely signed by the captain of the boat, but mostly by the first clerk, and occasionally by the second clerk, in the absence of the first clerk. The second clerk testified, that one of his duties was to receive and discharge freights. That the clerk of libellant came to him while he was discharging freight, on the levee, and not over ten feet from the staging, and gave him some bills. It was snowing very hard, and he did not open the bills for fear of the snow soiling them. He put them into his overcoat pocket, and was busy for half to an hour, when he went on board and took out the bills, and laid them on the clerk's desk, in the usual place for bills of freight received, calling the attention of the first clerk to the bills, who was at the time engaged ticketing passengers. The second clerk also testified that libellant's clerk, in handing him the bills, said here are the bills; but there was nothing said to indicate what bills they were. He laid the bills on the clerk's desk in the office, five hours before the boat departed. He received the bills, because he received all bills of freight while he was on the levee. And when the freight was discharged, he attended to the bills of freight to be shipped.

Libellant's clerk testified that he delivered two bills of lading, duplicates of the one in evidence, to the second clerk of the boat, between six and seven o'clock in the evening, on the levee, who was then employed checking freight off the boat. He did not inform the second clerk of the contents of the bills, but thinks he said, there are the bills of the barge, and that the second clerk made some assenting remark. There were two bills delivered, and the third bill was kept by libel-

lant in his book, which is usually signed when the bills are delivered. The book was not signed on account of the snow and storm. In some previous instances the book was not signed until the next arrival of the boat, after the transportation of the wheat on the barge.

The captain testified that he had no notice at Winona that the barge was ready and loaded for him, but on the way the first clerk brought the bills to him, saying that he found them on the floor.

The first clerk testified that he had no notice at Winona of the delivery of the bills, and makes no mention of having shown them to the captain.

Libellant testified that he shipped wheat at Winona on barges of the steamboat line almost daily. When the boat was not there, he would take charge of loading the barges, for which he was paid one-half cent per bushel. When a boat was there, he preferred them to take charge of the loading. No objection was made to this proceeding until after the barge Farly sunk; and he never heard of any objection until then. He kept men on the barges that he loaded until the boat got there, and then turned the barges over to the officers of the boat. He gave the barges to them by getting the bills signed, or telling them, or giving them memoranda bills. It is the custom of the boats to take two bills, and give him one signed. One is his receipt, one they give to the railroad consignee, and they keep one. A memorandum bill is a copy of his book, but not signed. Sometimes the boat officers took the memorandum bills, and signed the book on the next trip, and paid charges for loading. This occurred frequently in the busy season. After he had notified the boat that the barge was ready, he did nothing more. The men were taken off. The notice was given to the captain, or the clerk—very often to the second clerk. Upon such notice, the boat would take the barge when they were ready. He knew of no other rule.

It is praven that the barge was seaworthy, of capacity to

hold thirty-five hundred bushels of wheat in bulk; and her usual load that season was from twenty-eight hundred to thirty-one hundred bushels.

The boat and barge belonged to claimant, and were used in their business, in the transportation of wheat in bulk from Winona to La Crosse. The barge was employed as appurtenant to, and as part of, the equipment of the boat. Such is the allegation of the libel and confession of the answer, and such is the proof. Delivery of wheat in bulk by the shipper to the boat on the barge, is the same as delivery on board the boat. The question is, whether there was such a delivery and receipt of the wheat, as to form a marine contract, binding on the boat.

The reception of goods by the master, on board of the ship or boat, or at a wharf near the ship or boat, for the purpose of carriage thereon, or by any person authorized by the master or owner to receive thereon, binds the ship or boat to the safe carriage and delivery of the goods. 1 Parsons on Maritime Law, 132-133, and note. The vessel is liable for damages to goods delivered, before bills of lading are signed. Small v. Corwith, 19 Law Reporter, 198. In that case the damage occurred to the goods while lying on the wharf at the place of shipment. The bill of lading is a document given and received as evidence of the contract of affreightment, and a receipt for the goods. Goods put on board and carried to the port of destination, without bills of lading, are liable to the vessel for freight charges, and the vessel is equally bound for their safe delivery. It is not essential to the validity of a contract of affreightment, that a bill of lading should be signed by the master, even when he has control of the ship by a verbal agreement with the owners. Flanders on shipping, 450, and note; 1 Conkling's Ad. 131. It is apparent from the proof in this case, that on notice to the boat in any of the ways mentioned, that the barge was loaded and ready, the obligation and duty of the boat commenced, whether the bill of

lading was signed or not. The shipper took no further notice of the barge. His duty there ended, and that of the carrier commenced. The act of the second clerk in receiving the bills, and placing them on the first clerk's desk, in the usual place for shipping bills, for his examination, relieved the shipper of further charge of the barge. If the second clerk had refused the bills on the wharf, contrary to his custom, the shipper would be obliged to go aboard, or to the first clerk, with them. But where is the essential difference between the shipper's handing the bills to the first clerk, or the second clerk, according to his usual custom, laying them on the first clerk's desk, calling his attention to them?

Under the maritime law of the United States, the vessel is bound to the cargo, and the cargo to the vessel, for the performance of a contract of affreightment; but the law creates no lien on a vessel as a security for the performance of a contract to transport a cargo, until a cargo is shipped under it. Freeman v. Buckingham, 18 Howard, 182–188. In Vanderwater v. Mills, 19 Howard, 82, the Supreme Court of the United States lay down the following rule in admiralty: "Maritime liens are *stricti juris*, and will not be extended by construction. The obligation between the ship and cargo is mutual and reciprocal, and does not take place till the cargo is delivered on board." But this rule is explained in Bulkley v. The Naumkeag Steam Cotton Company, 24 Howard, 386. The master receipted for one hundred bales of cotton, to be carried on his vessel, and placed it on a lighter, of which he had control, to be transferred from the warehouse in the city of Mobile, to his vessel, lying outside the bar. The cotton was lost by fire on the lighter before reaching the vessel. It was held that a delivery of the cotton to the lighterman was a delivery to the master, and bound the vessel. In the opinion, the court say: "It is insisted that the vessel is exempt from responsibility, upon the ground that the one hundred bales of cotton were never laden on board her, and we are referred to several cases in this court, and in England, in support of this

position. (The two above-named cases and others.) But it will be seen on reference to these cases, the doctrine was applied as asserted, upon a state of facts wholly different from those in the present case. In the cases where the point was ruled, the goods were not only not laden on board the vessel, but they had never been delivered to the master. There was no contract of affreightment binding between the parties, as there had been no fulfilment on the part of the shipper, merely the delivery of the cargo." "We must look to the substance and good sense of the transaction; to the contract as understood and intended by the parties, and as explained by its terms and the attending circumstances out of which it arose; and to the grounds and reasons of the rules of law upon the application, their duties and obligations are to be ascertained, in order to determine the scope and extent of them. And in this view, we think no well-founded distinction can be made as to the liability of the owner of the vessel, between the case of the delivery of the goods into the hands of the master at the wharf, for transportation on board of a particular ship, in pursuance of the contract of affreightment, and the case as made, after the lading of the goods upon the deck of the vessel. The one is a constructive, the other an actual possession; the former the same as if the goods had been carried to the vessel by her boats, instead of the vessel going herself to the wharf."

In the case of Newhall v. The Bark R. C. Winslow, 3 Law Monthly, 78, decided in this court, the master had contracted to receive on board his vessel for transportation a quantity of wheat, at a warehouse in Milwaukee, where wheat was weighed in one hundred bushel drafts, tallied by the first mate, and discharged through iron pipes extending from the warehouse to the vessel; the second mate being on deck to watch the flow of wheat from the pipes into the hold of the vessel, to shift the pipes, to control the discharge of wheat into the vessel, and to trim the vessel. Through the negligence of the second

mate, seven drafts of wheat were lost in the river by the parting of the pipe. It was held that the wheat was delivered to the vessel when it passed from the warehouse into the pipe, and that the vessel was liable for the loss. The shipper had delivered the wheat into the control of the vessel, and it was no fault of his, but the fault of the carrier, that the wheat was lost between the warehouse and the vessel. The second mate in that case occupied about the same position toward the vessel as the second clerk did towards the steamboat in this case. They were vested with duties binding upon their respective vessels. In one case, the second mate was placed on deck to receive the wheat and superintend the loading of the vessel. In this case, the second clerk had authority to receive the bills from the shipper; the receipt of which was a delivery of the wheat on the barge to the boat, in the usual course of business between the shipper and carrier at Winona.

When the first clerk brought the bills to the captain while under way, he had notice of the shipment; and on inquiring would have ascertained the facts. This was notice to put him an inquiry about the barge, if he had been disposed to do his duty. And if he found on inquiry that the bills had been delivered to the second clerk by the shipper at Winona, he should have returned for her, or taken some means for her safety. Of the fact of showing the bills to the captain, the first clerk makes no mention in his testimony. The loss propounded in this libel is attributable to the neglect of these two officers of the boat.

Decree for Libellant.

His Honor, Mr. Justice DAVIS, concurring in the views of the District Judge, the decree was affirmed by the Circuit Court.

POINT.

The decree is just, and in harmony with the law and facts of the case, and should be affirmed. No error or mistake of fact can be discerned.

N. J. EMMONS,
Counsel for Appellee.